SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 20

SCHAFFER TRANSPORTATION COMPANY AND AMERICAN TRUCKING ASSOCIATIONS, INC., APPELLANTS,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA

FILED SEPTEMBER 14, 1956

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[fol. 2] **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION**

Civil Action No. 624 N.D.

A. W. SCHAFFER, d/b/a SCHAFFER TRANSPORTATION COMPANY, and AMERICAN TRUCKING ASSOCIATIONS, INC., Plaintiffs

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants

---

COMPLAINT—Filed August 8, 1955

Come now A. W. Schaffer, doing business as Schaffer Transportation Company, and American Trucking Associations, Inc., plaintiffs herein, and for their cause of action state:

I

Jurisdiction

This is an action to suspend, enjoin, annul and set aside a report on reconsideration and orders of the defendant, Interstate Commerce Commission, and arises under the provisions of Section 205 (g) of the Interstate Commerce Act, 49 U.S.C. §305 (g), Section 10 of the Administrative Procedure Act, 5 U.S.C. §1009, and Sections 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code, 28 U.S.C. §§1336, 1398, 2284 and 2321 to 2325. The United States of America is named as a defendant pursuant to Section 2322 of the Judicial Code, 28 U.S.C. §2322.

II

Parties

Plaintiff, A. W. Schaffer, of Revillo, South Dakota, doing business as Schaffer Transportation Company, is a com- [fol. 3] mon carrier by motor vehicle engaged in transportation of granite and other commodities in interstate commerce pursuant to authority granted by the defendant,

Interstate Commerce Commission, under Docket No. MC–93529. Plaintiff is the applicant in Docket No. MC–93529 (Sub-No. 2), the proceeding described in Paragraph III hereof, and is sustaining continuing and irreparable injury as a result of the report and orders complained of.

Plaintiff, American Trucking Associations, Inc., (hereinafter called A.T.A.) is a voluntary non-profit corporation organized under the laws of the District of Columbia, with offices at 1424 Sixteenth Street, N.W., Washington 6, D. C., and is the national organization of the trucking industry, owned and maintained by said industry. Plaintiff A.T.A. was authorized to intervene and participate in the proceeding in Docket No. MC–93529 (Sub-No. 2), as set forth in Paragraph III hereof. The report and orders of the Commission, described in Paragraph III, adversely affect the interests of Plaintiff's members, who constitute a class too numerous to name individually and for whom it customarily appears in proceedings before the Interstate Commerce Commission and the Courts.

III

Statement of the Case

By application filed May 28, 1951, as amended, plaintiff, A. W. Schaffer, doing business as Schaffer Transportation Company, sought from the defendant, Interstate Commerce Commission, a certificate of public convenience and necessity authorizing operations, in interstate commerce, as a common carrier by motor vehicle of granite, manufactured and rough, (1) from points in Grant County, South Dakota, [fol. 4] to points in ten states (primarily in the East) and the District of Columbia, and (2) from points in Vermont to points in sixteen states (primarily in the Midwest), where Division 5 found there are no motor carriers operating affording a similar service. After appropriate proceedings the report and order of Division 5 of the Commission in Docket No. MC–93529 (Sub-No. 2), *A. W. Schaffer Extension—Granite*, dated May 24, 1954, attached hereto and made a part hereof as Appendix A, found that the public convenience and necessity required plaintiff's proposed operations substantially as requested, that plaintiff was

fit, willing and able properly to perform such service and to conform to the applicable laws and regulations and that a certificate authorizing such operations should be granted.

Following petition of numerous protestant railroads Division 5, by order of November 12, 1954, reopened the proceeding in Docket No. MC-93529 (Sub-No. 2), *A. W. Schaffer Extension—Granite*, for reconsideration on the same record. Subsequently, the entire Commission assumed jurisdiction of the proceeding and in a six to four decision, with one commissioner not participating, reversed Division 5's decision. The report and order of the Commission dated February 7, 1955, (63 M.C.C. 247), is attached hereto and made a part hereof as Appendix B,* and states that the record does not sustain the prior finding that public [fol. 5] convenience and necessity required the proposed operations, and ordered the prior order of May 24, 1954 (Appendix A), vacated and set aside.

By petition dated March 4, 1955, Plaintiff Schaffer Transportation Company requested reconsideration by, and oral argument before, the defendant Interstate Commerce Commission. By petition dated March 9, 1955, plaintiff A.T.A. requested leave to intervene, reconsideration by, and oral argument before defendant Interstate Commerce Commission. By order of May 16, 1955, attached hereto and made a part hereof as Appendix C, the defendant Interstate Commerce Commission granted leave to intervene to plaintiff A.T.A., but denied the petitions for reconsideration and oral argument of both plaintiffs.

Plaintiffs through the various procedural steps referred to have exhausted their administrative remedies before the Interstate Commerce Commission.

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* In the printed advance sheet attached as Appendix B, the government printing office showed Commissioners Cross, Arpaia, and Clarke as the only dissenters. However, in the original mimeographed order issued by the Commission, it shows that Commissioner Winchell also dissented. The minutes of the Commission's meeting for February 7, 1955, we are informed, also show that Commissioner Winchell dissented from the majority when a vote was taken on the disposition of the proceeding.

IV

Grounds for Relief

The Interstate Commerce Commission, in making and issuing the report and orders complained of (Appendix B and C) exceeded its powers and authority delegated under law and erred as a matter of fact and as a matter of law in the following particulars:

(a) The finding of the Commission that plaintiff A. W. Schaffer's operations are not required by the public convenience and necessity is contrary to and unsupported by the evidence.

(b) The finding of the Commission that the presently-available railroad service is reasonably adequate to meet the needs of the shippers involved is contrary to and not [fol. 6] supported by evidence.

(c) The finding of the Commission that the main purpose of the shippers involved in supporting the application for the proposed service is to obtain lower rates rather than improved service is contrary to and not supported by the evidence.

(d) The report and orders of the Commission failed to recognize and preserve the inherent advantages of motor-carrier transportation contrary to the provisions of the National Transportation Policy, 49 U.S.C. preceding §1.

(e) The report and orders of the Commission failed to promote safe, adequate, economical and efficient transportation service contrary to the provisions of the National Transportation Policy.

(f) The report and orders of the Commission discouraged and hindered the establishment of sound competitive conditions and promoted monopoly in transportation contrary to the provisions of the National Transportation Policy.

(g) The report and orders of the Commission failed to give effect to the well-established principle of law under Section 207 of the Interstate Commerce Act, 49 U.S.C. Section 307, that shippers are entitled to adequate service by motor vehicle as well as by rail.

(h) The report and orders of the Commission failed to give effect to the well-established principle of law under

Section 207 of the Interstate Commerce Act, 49 U.S.C. §307, that the fact that a particular point has adequate rail service is not sufficient reason for denying a motor carrier's application for a certificate to perform motor vehicle service.

[fol. 7] (i) For the reasons set forth, the report and orders complained of (Appendix B and C) are not in accordance with law or with the evidence, and are unreasonable, arbitrary, capricious, and constitute an abuse of discretion.

V

Prayer for Relief

Wherefore, plaintiffs respectfully pray:

(a) That in accordance with Rule 4 of the Federal Rules of Civil Procedure this Court order process to issue against the defendants, Interstate Commerce Commission and the United States of America.

(b) That in accordance with Section 2284(1) of Title 28 of the United States Code this Court immediately notify the Chief Judge of the United States Court of Appeals for the Eighth Circuit who shall designate two other judges, at least one of whom shall be a circuit judge, to serve as members of the Court to hear and determine this action.

(c) That upon final hearing of this action judgment be entered to suspend, enjoin, annul, and set aside the report and orders of the defendant, Interstate Commerce Commission, complained of herein, and that the Court remand this matter to the Commission for further proceedings consistent with the Court's opinion.

(d) That the Court grant such further relief as it deems just and proper.

Respectfully submitted,

Donald A. Morken, 1100 First National-Soo Line Building, Minneapolis 2, Minnesota, Attorney for A. W. Schaffer, doing business as Schaffer Transportation Company.

[fol. 8] Peter T. Beardsley, Fritz R. Kahn, 1424 Sixteenth Street, N.W., Washington 6, D. C., Attorneys for American Trucking Associations, Inc.

R. G. May, 316 Security Bank Building, Sioux Falls, South Dakota, Attorney for A. W. Schaffer, doing business as Schaffer Transportation Company and for American Trucking Associations, Inc.

Dated: August 8, 1955.

[fol. 9] APPENDIX "A" TO COMPLAINT.

This report will not be printed in full in the permanent series of Motor Carrier Reports of the Commission.

INTERSTATE COMMERCE COMMISSION

No. MC-93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE

Submitted May 27, 1953 *Decided May 24, 1954.*

Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, of rough and finished granite, (1) from points in Grant County, S. Dak., to points in six states and (2) from points in Washington and Orange Counties, Vt., to points in 16 States, over irregular routes. Issuance of a certificate approved upon compliance by applicant with certain conditions and application in all other respects denied.

Donald A. Morken and *J. L. Hetland* for applicant.

Frank M. Coyne, R. W. Cronon, James G. Lane, and *Claude G. Metzler* for protestants and interveners in opposition to the application.

DIVISION 5, COMMISSIONERS CROSS, ELLIOTT, AND TUGGLE

BY DIVISION 5:

Exceptions were filed by certain protestants and interveners to the order recommended by the examiner, and applicant replied. Our conclusions differ somewhat from those recommended.

By application filed May 28, 1951, as amended, A. W. Schaffer, of Revillo, S. Dak., doing business as Schaffer Transportation Company, seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of granite, manufactured and rough, (1) from points in Grant County, S. Dak., to points in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, Texas, Arkansas, Louisiana, Wyoming, North Dakota, and the District of Columbia, and (2) from points in Vermont to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, over irregular routes. Wm. M. Dingmann, doing business as Granite City Transfer, hereinafter called Dingmann, class I carriers in western trunkline territory, New England territory railroads, Texas Railroad Association, and eastern railroads (except the Chesapeake & Ohio Railway), oppose the application.

Applicant holds a certificate authorizing, so far as here material, the transportation (1) of granite from points in Grant County to points in Montana, Colorado, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, and (2) of silican carbide from Niagara Falls, N. Y., steelshot from Mansfield, Ohio, and polishing stucco from Ft. Dodge, Iowa, and Chicago Heights, Ill., to points in Grant County, over irregular routes. The purpose of the [fol. 9A] instant proposal is to enable applicant to enlarge the destination territory of his present granite operations out of Grant County and to institute a new, similar west and southbound service from Vermont origins to the 16 States named in that part of the application. A grant of

this authority would be advantageous to applicant from both an operational and financial standpoint, inasmuch as he would be able to obtain additional traffic and also better balance his over-all operations. He operates 14 tractor-trailer units and one additional tractor, of which six units are used exclusively for the movement of granite. Four units generally are used in the conduct of his private operations, described below. In the event the application is granted, vehicles used in transporting shipments from Grant County to certain eastern destinations, such as Ohio, West Virginia, Maryland and the District of Columbia, would be deadheaded to the Vermont origin area under consideration to pick up west-bound traffic.

There are three granite fabricating plants in the concerned South Dakota territory, some of which have their quarries and finishing plants in separate locations. In 1951, applicant transported a total of 157 loads of granite out of this area. At present, he transports one load a week to points in New York and Pennsylvania and frequently returns with empty equipment. If the proposed service is authorized, he intends to station a dispatcher and several pieces of equipment either at Barre or Montpelier, Vt., and to perform a "shuttle" service between the described South Dakota and Vermont origins. He now offers third-day delivery from Grant County to points in Illinois, Indiana and western Ohio, and fifth-day delivery to upstate New York points. He estimates that an additional day will be required to serve the proposed New England points and from five to eight days the southern and eastern destinations involved. The delivery time from Vermont would be approximately the same as that from Grant County.

In addition to his motor carrier business, to which he devotes about 90 percent of his time, applicant also is connected with several other enterprises. He operates a garage at Alby, S. Dak., owns a farm which from time to time is leased to others, and is a wholesale distributor of feed and other products for the Carey Salt Company. Separate books are maintained for each of these businesses. Applicant's consolidated balance sheet as of December 31, 1951, shows assets aggregating $38,414.62, of which $2,463.06 are current assets; total liabilities of

$16,448.93, including current liabilities of $1,773.93; and a net worth of $21,965.69. His total net income for 1951 was $844.13. Applicant is fit and able, financially and otherwise, properly to conduct the proposed operation.

One shipper supports the authority sought in (1) of the application and two shippers, six receivers and one association support the remaining portion of the application.

The Dakota Granite Company, of Milbank, S. Dak., has [fol. 10] two quarries in Grant County where it quarries granite which it finishes into mausoleums, monuments and building granite. These products are shipped to retail outlets by truck and by rail, principally in less-than-carload quantities. Since shipper's facilities are located about 6½ miles from a rail siding, it must use a local trucker to place tonnage at the railhead which is more expensive and inconvenient than loading directly at its plant. It now satisfactorily uses applicant's existing service two or three times a week and expresses a need for a similar service to the proposed States. If such service were made available, shipper would use it, in addition to other points, seven or eight times a year for the movement of shipments destined to the concerned New England area. At present, it has orders on file from customers in Texas, Arkansas, North Dakota, West Virginia and the New England States. All of these customers have requested delivery by motor carrier. Shipper is developing a new territory for its products in Texas and would like to have motor service available for the transportation of any traffic that may result. In this connection, it states that it cannot, at first, expect orders large enough to require carload shipments and less-than-carload shipments might prove to be too costly for the dealer to handle initially. It estimates that in the beginning only about 24,000 pounds a year would move to that particular area. It now has a contract under which it is shipping by rail substantial quantities of granite to a project in North Dakota near the Canadian border. Motor service also has been requested for the delivery of this traffic. Shipper's customers pay the freight charges and have the privilege of requesting the carrier to be used. In most instances, they request motor service for the movement of their small shipments.

The main reason its dealers at eastern points prefer motor rather than rail service is because they are able to obtain split deliveries in small quantities at a reasonable cost. Furthermore, shipments moving by motor carrier arrive at their destinations faster and usually without being damaged. From the shipper's standpoint, it is also more economical to use applicant's service rather than rail because the cost of cartage to the rail siding is eliminated and the crating of the monuments need not be so extensive. Shipper has not used the service of intervener Dingmann in the past two years primarily because of rate considerations. Moreover, it prefers to use a carrier whose equipment is stationed near its place of business. It takes Dingmann three hours from St. Cloud, Minn., to pick up a shipment after being called, whereas shipper can obtain a truck from applicant in 30 minutes.

[fol. 10A] Osborne-Peterson, Inc., of St. Paul, Minn., a retail monument dealer, fabricates and letters granite monuments and markers. It receives both rough and finished granite from Vermont exclusively by rail, mainly in carload lots, and intends to continue using that service. Less-than-carload service is used when pool-car service is not available and there is a rush for a particular shipment. Dealer received one such shipment during the period from January 1 to June 13, 1952. That shipment which weighed 2,540 pounds, and consisted of five polished granite markers, separately crated, was shipped on April 28, and received on May 27. One of the crates was broken in transit and all the markers were damaged, thus rendering them unsuitable for the purpose for which they were ordered. As a rule, the transit time on less-than-carload traffic ranges from 3½ to 6 weeks. Dealer's interest in the proposed operation is motivated by its desire to receive less-than-carload traffic faster and in better condition than it is now arriving, especially during the two months preceding Memorial Day, which is its busiest season. Under existing conditions, a monument should be delivered at its place of business some time in March to assure Memorial Day installation. If authorized, dealer estimates it would use the proposed service six or eight times a year for the movement of either truckload or less-than-truckload shipments.

A dealer at Hutchi-son, Kans., retails public and private memorials to customers located generally in the southwest corner of Kansas. He purchases from 40,000 to 60,000 pounds of finished granite annually from manufacturers at Barre, Vt., which tonnagewise amounts to approximately six less-than-carload and four pool-car shipments. This traffic moves over multiple-rail lines to Kansas City, the break-bulk point, then is delivered to the consignee either by local rail or motor service. Dealer's testimony relative to the transit time involved on shipments from Vermont is conflicting, however, it appears that although over a period of time the average shipment is en route 10 days, a transit time of from 14 to 21 days is not uncommon. In recent years, dealer has experienced a little damage in using rail service, but does not consider it to be undue. He is interested in the proposed operation as it will reduce the amount of crating now necessary to protect the granite, require less handling of the lading, and be faster than existing rail service. Generally, his peak period extends from March to June, with April 1 being the "cut-off" date for Memorial-Day deliveries. Applicant has assured him of a 9-day service, at the most, from Barre, which would be advantageous as it would enable him to extend the deadline for deliveries by as much as two weeks, in some instances. Dealer states that speed is an essential element in the transportation of granite from Vermont and that, if authorized, he would utilize applicant's service mostly for the movement of less-than-truckload shipments involving split deliveries.

[fol. 11] A retail monument dealer at Fremont, Nebr., receives from Vermont origins, in either pool-car or less-than-carload quantities, six or seven shipments of finished granite a year, amounting to approximately 25,000 pounds. The proposed operation would be advantageous to him for several reasons. First, and most important, because it would be faster and more reliable than existing rail service and, thus, enable him to predict with some degree of accuracy when shipments would arrive. This is especially important during the peak season when delivery deadlines must be met and would permit him to compete more effectively with a nearby manufacturer who does his own finishing and who can, with reasonable certainty,

estimate when a particular order will be ready for delivery. Additionally, he would be able to maintain a lower inventory and obtain transportation at a rate somewhat lower than that now in effect on less-than-carload shipments. He receives granite from sources in Minnesota by motor carrier and expresses a need for a similar type of service from Vermont origins.

A retail monument dealer at Moberly, Mo., receives his granite products from Barre by rail, mainly in less-than-carload lots. The transit time in these shipments ranges from 7 to 18 days, with the average being 11.5 days. Because dealer is located on the terminal point of a railroad he considers rail service to be good. However, the proposed service would be advantageous, particularly during the peak season when expeditious service is required.

A monument dealer at Aberdeen, S. Dak., receives from 25,000 to 30,000 pounds of finished granite, except for lettering, a year from Barre. Because of the comparatively small size of his business, he is unable to stock carload quantities of monuments, and it is not practicable for him to utilize pool-car service in conjunction with the other dealers because of the great distances between dealerships. Consequently, he receives all of his freight in less-than-carload lots. These shipments arrive in about 17 days, frequently with the crates broken and, at times, with the monuments damaged. Since dealer has no facilities to repair damaged monuments, any piece of granite damaged must be reordered. The proposed service with its inherent advantages would be beneficial to his business.

A retail monument dealer at Loves Park, a suburb of Rockford, Ill., purchases about 25,000 pounds of custom-designed monuments a year from manufacturers at Barre. These monuments are ready for erection in the cemetary upon arrival, and any damage to them necessitates remanufacturing and, of course, redelivery. All of dealer's monuments move by rail, in less-than-carload lots, and are received monthly in quantities of three or less. The transit time of this traffic averages from three to five weeks. [fol. 11A] In using rail service, dealer has experienced quite some damage, consisting in some instances of monu-

ments being marred by grease or oil, and in other instances, arriving with cracks in them. Formerly, dealer had his shipments delivered directly to his place of business, but because of delays at the railhead, he discontinued that method of operation. He now performs that pickup-and-delivery service himself, receiving an allowance therefor from the railroad in those instances where the latter was to provide the transportation, and is satisfied with such arrangement. He would use the proposed service for the movement of almost all of his traffic.

Jones Brothers Company is engaged principally in the manufacture of granite monuments which are sold generally throughout the United States. So far as here material, all of its shipments originate at Barre and points within a radius of 5 miles thereof. In 1951, it shipped 1,600,000 pounds of granite to customers throughout the affected territory, of which 600,000 pounds moved in less-than-carload quantities and the remainder in either carload or pool-car shipments. Carload service has proven satisfactory, pool-car service not entirely satisfactory, and less-than-carload service unsatisfactory. The principal reason why the second-named method of transportation is not deemed adequate in all respects is because the dealer to whom the consolidated shipment is consigned is held responsible for all the freight involved, regardless of how many other dealers may be participating in the movement. Furthermore, in using this type of service shipper must hold up its orders until sufficient tonnage is accumulated to constitute the pool car. At times, this creates a serious lull between the time the monuments are finished and the time they are shipped. Shipper is dissatisfied with the less-than-carload service because of the length of time the shipments are in transit; the damage that occasionally occurs to some of the merchandise; and the cost involved. It submitted in evidence an exhibit showing the dealers it is now supplying in the destination territory under consideration. Of the 117 named, 7 were in Minnesota, 2 in North Dakota, 6 in Montana, 9 in Colorado, 12 in Wisconsin, 31 in Illinois, 14 in Missouri, 12 in Iowa, 4 in Nebraska, 10 in Oklahoma, 3 in Arkansas, 5 in Texas, and one each in South Dakota and Louisiana. Shipper avers

that many of its small dealers, due to the disadvantages connected with less-than-carload service, are changing their buying habits and purchasing granite at centers where they are able to obtain faster and cheaper motor transportation. In this respect, shipper points out that the lack of motor service is a severe handicap in competing with other producers of granite in Georgia and Minnesota which, it understands, have motor service available to the affected territory. In the event the proposed operation is not authorized, it is considering the possibility of instituting private-carrier operations for the movement of this [fol. 12] traffic. It now uses certain motor carriers to New York and Pennsylvania destinations, but has not tendered these carriers any traffic to the considered area as it understands they do not provide such a service. It is of the opinion that, as a practical matter, a grant of the application would, in the long run, prove beneficial to the railroads because it would be able to acquire new dealers who, although at first may only buy in truckload or less-than-truckload quantities, subsequently could be built up to the point where they would require and buy in carload lots. Shipper desires motor service on a daily basis, if possible, and has no objection to the consolidation of its freight with that of other Barre manufacturers. It would not expect applicant to transport a single 1,000-pound shipment to, say, Greeley, Colo., nor does it anticipate such a situation as that to arise as applicant more than likely would have tonnage from other shippers destined to that general area. It estimates that about 3,000 pounds of granite would be tendered to applicant daily, if his service were made available. It supplies the previously-mentioned dealers at St. Paul and Hutchinson and considers them to be typical customers.

Rock of Ages Corporation quarries granite and manufactures finished monuments and markers, which are distributed throughout most of the United States. It has two plants in Vermont from which shipments to the proposed area are made, one at Montpelier, which is about 7 miles from Barre, and the other at Northfield, some 22 miles from Barre. At the present time, it is endeavoring to build up its distribution to all of its dealers, but particularly

to those in the 16 States here involved, as they have a high agricultural population. In this regard, it has been shipper's experience that farmers provide the best market for its products. Currently, it has 168 dealers throughout the concerned destination territory to whom it ships a little over 5,000,000 pounds of finished granite a year. Of these dealers, 123 purchase in less-than-carload quantities and 45 in carload lots. Whenever possible, pool-car shipments also are made, but such service is not satisfactory because it is difficult for the dealer to whom all of the freight is consigned to pay the charge on the entire lot. Additionally, some dealers frequently have difficulty in collecting promptly from the other dealers participating in the movement, and others, find the task of unloading and reforwarding burdensome. At times, considerable rehandling of tonnage also is required in view of the fact that some dealers are not located on rail sidings. Less-than-carload service, which averages two weeks in transit and sometimes longer, is inadequate because of delays and the damage that occurs to the merchandise. During peak periods, such as Memorial Day, All Souls' Day, and Armistice Day these delays make it difficult for its dealers to meet erection deadlines. Shipper also is faced with the [fol. 12A] disadvantage of having to compete with other granite manufacturers in the south and west which have motor service available. It utilizes motor service throughout New England and portions of New Jersey, Pennsylvania, and New York, but has never been able to obtain service beyond Buffalo, N. Y. It sells to all of the supporting dealers, except the one at Moberly. Like the previous shipper and for the same reason, it believes that the instant proposal, over a period of time, would not only aid its expansion program, but also would be helpful to the railroads from both a tonnage and revenue standpoint. Moreover, it states that there is a need for faster and more frequent service in order to give the smaller dealers who cannot now, due to the capital investment required, carry a representative group of monuments. It is of the conviction that there are excellent opportunities for expansion in such States as Missouri, Oklahoma, Texas, Arkansas, Nebraska, Iowa, and Minnesota and that its salesmen could

successfully take advantage of these opportunities if the proposed service were made available. In the latter event, it would tender to applicant two or more truckloads, ranging from 24,000 to 30,000 pounds, each week.

The Barre Granite Association is a trade association consisting of 77 members all located in the Barre granite producing area. Of these members, 5 are carriers, 5 do custom sawing and polishing of granite and 67 are manufacturers of finished granite products. Included among the latter are the two shippers named immediately above. The function of the Association is to represent its members in traffic and shipping matters. It does not sell granite but limits its activities to the consolidation of shipments and the arranging of pool-car service out of Barre for its members. The latter ships to all of the States except Nevada. During the period extending from December 1, 1950, to December 1, 1951, this Association arranged for the pool-car movement of 268 cars of granite to 900 dealers in 25 States. Of this tonnage, 156 cars were consigned to dealers in the States covered by this portion of the application. The only motor service it selects is that used for local pickup-and-delivery service at each end of the movement. It favors a grant of the proposed service and would assist its members in making use of it. It states the source of supply of granite in Vermont is limited to the Barre area in Washington County and Williamstown, Vt., in Orange County. The witness representing the association asserted that he also was authorized to represent 18 members of this association at the further hearing herein, on December 2, 1952. However, he was unable to present specific evidence relative to such matters as the tonnage each of the members ships and the particular destination points to which their traffic moves.

[fol. 13] The Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, the Texas and New Orleans Railroad Company, the Central Vermont Railway Company, and Dingmann presented evidence in opposition to the application.

Dingmann operates as a common carrier by motor vehicle, over irregular routes, of finished monumental and structural or partially finished granite from points in Grant County

to points in certain eastern and midwestern States, including Maryland, Vermont, Connecticut, Massachusetts, and the District of Columbia. He has been hauling granite since 1941, and all of his drivers are experienced in the handling of that product. He maintains headquarters about 140 miles from Grant County and operates 10 pieces of equipment which, except during the two-month period preceding Decoration Day, are not fully utilized. If the need arises for more equipment, he is able and willing to supplement his fleet. He offers five- to six-day service from points in Grant County to points in the States just named, and transports about two loads of granite a month from and to these points. Until about 18 months prior to June 13, 1952, the date of the first hearing herein, he provided service, without complaint, to the eastern territory here involved which he is authorized to serve, for the supporting shipper, Dakota Granite Company. He asserts the latter company discontinued using his service solely because it considered his rates to be too high. He desires once again to serve that shipper, stating that his service is similar to that proposed by applicant. He is apprehensive that a grant of the requested authority would deprive him of the eastbound traffic he is now transporting from Grant County.

Milbank is located on the main line of the St. Paul and Pacific Railroad from which point the latter renders direct service to Chicago where connections are made with other rail carriers for service to points and areas involved in the application. The Texas and New Orleans Railroad Company is primarily concerned with the proposed service insofar as it pertains to points in Louisiana and Texas throughout which destination area it, in conjunction with other railroads, offers service. The Central Vermont Railway Company originates granite traffic at four of its stations, namely Barre, Montpelier, Northfield, and Waterbury, Vt., and competes with the Barre and Chelsea Railroad for the outbound movement of granite from that area. All of these rail carriers are ready and able to handle the involved traffic and believe that a grant of the application would have an adverse effect on their operating revenues.

The examiner recommended that the application be granted, except that service from the requested Vermont

origins should be limited to Washington and Orange counties. The following contentions of exceptants, with duplications eliminated, will be disposed of individually or collec-
[fol. 13A] tively in the ensuing discussion, depending upon the category into which they fall.

In their exceptions, certain class I rail carriers in western trunkline territory argue that the examiner erred in giving weight to the incidental inconveniences, such as delays in transit, damage to the merchandise and lack of proper rail sidings, experienced by the supporting shippers; that the latter have available rail service which is adequate generally to meet their transportation needs and support the application mainly because of their desire for lower rates; and that the recommendation of the examiner, if followed by us, would result in the loss of highly desirable traffic and in the diminution of rail revenues, both of which they can ill afford. They also argue that the examiner erred in not permitting their cross-examination of a shipper witness which allegedly would have developed that "huge trucks do more than their share of damage and pay less than their share of the cost." They maintain that such cross-examination should have been permitted since it pertains to the public interest. In the same vein, they request, in the event a need is found for the service proposed, a further hearing for the purpose of permitting them to cross-examine applicant and the shipper witnesses, among other things, on the following matters; (1) whether applicant has damaged or will damage the public highways to the extent indicated in certain issues of Readers Digest, (2) whether applicant's operations from Grant County to points in Maryland would break up the roads to the extent established in the "Maryland road tests of June, 1950" and (3) whether the supporting witnesses agree with the views expressed in another article in Readers Digest. Interveners further assail as error the admission by the examiner of certain testimony touching on the subject of rates, and cite five instances thereof. They, therefore, request that a hearing de novo be granted wherein all evidence of that nature be excluded.

As to the procedural issue raised, the examiner sustained an objection to the following question asked by counsel

for interveners on cross-examination of a shipper witness "Q. Did you see this article on page 41 entitled 'Huge Trucks Do More Than Their Share of Damage, Pay Less Than Their Share of the Cost'"? Irrespective of whether this question may relate to the public interest or not, it manifestly is beyond the scope of the direct examination and the examiner's ruling is sustained.

Concerning interveners' allegation that the examiner erred in admitting certain testimony relative to rates, the record shows that no objection was made to such testimony in three of the cited instances. Furthermore, one of the attorneys representing interveners, which now vigorously condemn the admission of such evidence, was partially responsible by his interrogation for the evidence of this type being presented. In any event, although we agree gen- [fol. 14] erally that testimony of this character should not be admitted in proceedings of this nature we are not persuaded that interveners were prejudiced thereby. Assuming, however, that the referred-to evidence had been excluded, the results herein would not be different. In view of the foregoing, interveners' request for a hearing de novo is hereby denied.

With respect to the request for a further hearing, the record clearly shows that the rail carriers were afforded and took advantage of the opportunity to present and develop facts pertinent to this proceeding. The described information which they seek to elicit at a further hearing, however, would be of no significant probative value nor would it change the conclusion on the ultimate issue to be determined here namely, whether a need has been established for the proposed operation. In the circumstances, the request is denied.

In their exceptions, eastern railroads aver that (1) the examiner was unduly impressed with the fact that there is no direct motor service available to points in the destination territory sought, (2) that his summary of the evidence is neither complete or entirely correct, (3) that applicant has made no study to determine if the proposed operation would be practicable and the evidence shows it would not, (4) that the rail carriers cannot be expected to maintain a dependable and efficient service for the transportation of all

classes of commodities, in whatever quantity offered, if a carrier such as applicant is permitted to enter the field on a "hit or miss" basis in the large area involved, and (5) that although the consignees would find the proposed operation a convenience during certain periods of the year, there is no evidence that applicant would be able to furnish such a service. More specifically, protestants argue that the evidence presented at the further hearing by the witness representing the Barre Granite Association and 18 member companies was hearsay in nature, inaccurately summarized by the examiner, and used to support an erroneous conclusion. They urge that the examiner erred in overruling their objections thereto. In the alternative to a denial of the application, protestants ask for hearing de novo on the ground that applicant failed to provide proper notice to motor carriers competitive with the proposed operations as required by section 5(a) of the Administrative Procedure Act.

We agree with protestants that the evidence adduced by the witness representing the association and 18 of its members, insofar as it related to any need that the 18 members may have for the proposed operation, was largely hearsay, and of no real probative value. Although we try to avoid technicalities, especially in procedural matters, to hold otherwise in this instance would be tantamount to denying protestants the right to cross-examine adverse witnesses, which, of course, is an essential part of a full and com-[fol. 14A] plete hearing. However, since our findings are not predicated upon the evidence which is objected to, protestants have not been prejudiced by the examiner'- rulings, which, in the circumstances, we see no reason to reverse.

Section 5(a) of the Administrative Procedure Act provides in part that "Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof." Our examination of the application indicates that in addition to numerous rail carriers, at least six motor carriers as well as various motor carrier associations were notified of this proposal. Although it is true that only one motor carrier, to a limited extent, opposes the application, in view of the testimony of the various witnesses, it is reasonably clear that there are no motor carriers operating in the considered territory which afford

a service similar to that proposed by applicant. Since the application was publicized as required by law, the fact that motor carriers other than Dingmann have not sought to intervene, standing alone, is not indicative that all persons entitled to notice did not receive it. Protestants' request for hearing de novo is denied.

Dingmann's exceptions are directed to the examiner's recommendation that applicant be authorized to operate from Grant County to points in Maryland, Connecticut, Massachusetts, Vermont, and the District of Columbia. He points out that the shipper at Milford is not now using his service to and from those points because of rate reconsiderations and argues that the application, to this extent, should, therefore, be denied.

In reply, applicant argues that all of the exceptions are without merit; that the examiner's findings are amply supported by the evidence; and that such findings should be sustained.

As previously indicated, the ultimate question to be resolved herein is whether a need has been established for the proposed operation. This issue cannot be answered affirmatively if both rail and motor carrier services are reasonably adequate. At this point it should be stressed that we agree with exceptants that the level of rates as such is not in issue. We do not agree with them, however, that the supporting shippers, except as hereinafter noted, were motivated, or influenced solely by their desire for lower rates. While the evidence does reveal that the cost of transportation is of interest to them, their views as to the adequacy of existing service cannot be disregarded for that reason.

As seen, the shippers and receivers, other than the Dakota Granite Company, have no for-hire motor service available to them to and from the points covered by the instant application and, consequently, use rail service almost exclusively. They all agree that such service, in the main, is satisfactory for the transportation of carload shipments but entirely inadequate for the transportation of less-than-carload shipments, not only from the standpoint of cost, but [fol. 15] also and primarily from a service standpoint. In this respect, the record shows that on movements of small shipments the supporting witnesses have experienced de-

lays, damage to their merchandise, and have been hampered to some degree by the lack or insufficiency of rail sidings. In many instances, they have been asked by customers to furnish delivery by motor carrier but because of the lack of such service they have been unable to comply with these requests. Moreover, and no less important from a business point of view, the shippers are faced with the competitive disadvantage of having to compete with producers of granite at other locations which have truck delivery available. Then, too, the lack of truck service has impeded shippers' ability to increase their sales and expand their markets in this area. By use of the proposed service, certain other benefits also would accrue to the shippers or dealers. For example, the latter would be able to maintain lower inventories, receive their freight faster and more frequently, and thus, be able better to meet erection deadlines, especially during the peak seasons. Furthermore, the amount of crating now necessary would be reduced with resultant savings in time and money. Unquestionably, some traffic would be diverted from the railroads should the application be granted in whole or in part. However, no carrier is entitled to protection from competition in the continuance of a service that fails to meet a public need, nor, by the same token, should the public be deprived of a new and improved service because it may divert some traffic from other carriers. In concluding that there is a need for the proposed service to the extent set forth in our findings, we have not overlooked the rail carriers' contention that the proposed service would not be practicable. There is nothing in the record, insofar as we can perceive, to substantiate this contention. In fact, the service proposed would tie in nicely with applicant's existing operation by providing him with return loads from Vermont origins. While his equipment would have to be deadheaded from certain eastern destinations to Vermont, the empty mileage involved would not be excessive so as to warrant the conclusion that the operation would not be feasible. Moreover, the tonnage which would be made available to applicant appears to be sufficient to enable him to provide an efficient and economical service.

The shipper at Milbank insofar as motor service is concerned, is in a somewhat better position than the other two

shippers, as it has available Dingmann's service to certain of the points under consideration, namely, Maryland, Connecticut, Massachusetts, Vermont, and the District of Columbia. Since the evidence shows that this shipper discontinued Dingmann's service not because his service was unsatisfactory, but solely because of rate considerations, this portion [fol. 15A] of the application will be denied.

We find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of rough and finished granite (1) from points in Grant County, S. Dak., to points in Wyoming, North Dakota, Texas, Arkansas, Louisiana, and West Virginia, and (2) from points in Washington and Orange Counties, Vt., to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, over irregular routes; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a certificate authorizing such operations should be granted; and that the application in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and with our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent granted herein.

COMMISSIONER ELLIOTT DISSENTS.

[fol. 16] ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 24th day of May, A. D. 1954.

No. MC-93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date

hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby denied.

By the Commission, division 5.

George W. Laird, Secretary.

(Seal)

[fol. 17] APPENDIX "B" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. MC-93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE

Decided February 7, 1955

Upon reconsideration, findings in prior report, decided May 24, 1954, reversed. Public convenience and necessity found not to require operation by applicant as a common carrier by motor vehicle of rough and finished granite, (1) from points in Grant County, S. Dak., to points in 10 States and the District of Columbia, and (2) from points in Vermont to points in 16 States. Application denied.

Donald A. Morken and *J. L. Hetland* for applicant.

Frank M. Coyne, R. W. Cronon, James G. Lane, Claude G. Metzler, and *J. P. Reedy* for protestants and interveners in opposition to the application.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

By application filed May 28, 1951, as amended, A. W. Schaffer, of Revillo, S. Dak., doing business as Schaffer Transportation Co., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of granite,

manufactured and rough, (1) from points in Grant County, S. Dak., to points in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, Texas, Arkansas, Louisiana, Wyoming, North Dakota, and the District of Columbia, and (2) from points in Vermont to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, over irregular routes. Wm. M. Dingmann, doing business as Granite City Transfer, class I carriers in western trunkline territory, New England territory railroads, Texas Railroad Association railroads, and eastern railroads, except The Chesapeake and Ohio Railway Company, oppose the application.

In the prior report herein, decided May 24, 1954, division 5 found that the public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of rough and finished granite (1) from points in Grant County, S. Dak., to points in Wyoming, North Dakota, Texas, Arkansas, Louisiana, and West Virginia, and (2) from points in Washington and Orange Counties, Vt., to points in South Dakota, Minnesota, North Dakota, Montana, [fol. 17a] Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, and that in all other respects the application should be denied. Thereafter, upon consideration of the record and of petitions of the opposing rail carriers to which applicant replied, by order of November 12, 1954, division 5 reopened the proceeding for reconsideration on the present record. Subsequently, in the interest of expedition, and upon the recommendation of division 5, we assumed jurisdiction of the proceeding.

In their petition, class I western trunkline rail carriers contend (1) that the evidence fails to establish that the presently authorized transportation services are inadequate either because of lack of equipment, length of time in transit, or damage to lading; and (2) that the supporting witnesses are interested in the proposed service merely because they feel that they will obtain motor-carrier transportation at lower rates than the existing rail rates.

The eastern railroads attack the prior report on a number of counts, some of which are repetitions in whole or in part.

Among these are points which were raised in their exceptions to the report of the examiner and were considered by division 5 in the prior report.

The essence of the eastern railroads' contentions are (1) that the supporting witnesses are motivated by a desire for cheaper rates; (2) that the witnesses' expressed desire for more expeditious service should be discounted because of their willingness to allow finished granite to be held for weeks and even months by Vermont producers until a sufficient quantity for a pool car can be accumulated; (3) that the witnesses' testimony is not properly summarized, as certain of them admitted they had not attempted to use existing motor service; certain of them expressed themselves as fairly well satisfied with rail service and had had very little damage on rail shipments; (4) that the testimony of the representatives of the Vermont granite producers is entitled to very little weight as their concerns do not pay the freight charges or control the considered traffic; that the representative of Rock of Ages Corporation was not sufficiently acquainted with the facts to stand cross-examination particularly with respect to his direct testimony that certain Georgia and Minnesota granite producers enjoyed motor-carrier transportation; (5) that the division obviously gave full weight to the testimony of the Vermont producers as it authorized service to points in 10 destination States from which no consignee appeared, and to 6 States from each of which only 1 consignee appeared; (6) that there are many motor carriers whose interline service has not been tried; (7) that the evidence does not establish that applicant would find it economically possible, in view of the small shipments to many scattered points and the deadhead mileage involved, to render the proposed service; [fol. 18] and (8) that a grant of the requested authority would have an adverse effect upon protestant rail lines.

In reply, applicant states that lower costs generally which can be obtained by the use of motor service with the resulting shorter holding time and time in transit, less damage, lower inventories, and less expensive crating, rather than lower rates as such, are the basis of the shippers' support. Applicant concedes that the Vermont granite producers do not pay the freight and that technically the

consignees have the right to control the routing but points out that the consignees ordinarily leave the routing to the producers. Applicant asserts that the many arguments advanced and contentions made by petitioners have already been considered by division 5 in the prior report and are without merit. Applicant requests that the petitions be denied and the order of division 5 affirmed.

Applicant holds a certificate authorizing, so far as here material, the transportation (1) of granite from points in Grant County to points in Montana, Colorado, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, and (2) of silicon carbide from Niagara Falls, N. Y., steelshot from Mansfield, Ohio, and polishing stucco from Fort Dodge, Iowa, and Chicago Heights, Ill., to points in Grant County, over irregular routes. The purpose of the instant proposal is to enable applicant to enlarge the destination territory of his present granite operations out of Grant County and to institute a new, similar west and southbound service from Vermont origins to the 16 States named in that part of the application. A grant of this authority would be advantageous to applicant from both an operational and financial standpoint, inasmuch as he would be able to obtain additional traffic and also better balance his overall operations. He operates 14 tractor-trailer units and 1 additional tractor, of which 6 units are used exclusively for the movement of granite. Four units generally are used in the conduct of his private operations, described below. In the event the application is granted, vehicles used in transporting shipments from Grant County to certain eastern destinations, such as Ohio, West Virginia, Maryland, and the District of Columbia, would be deadheaded to the Vermont origin area under consideration, to pick up westbound traffic.

There are three granite-fabricating plants in the concerned South Dakota territory, some of which have their quarries and finishing plants in separate locations. In 1951, applicant transported a total of 157 loads of granite out of this area. At present, he transports one load a week to points in New York and Pennsylvania and frequently returns with empty equipment. If the proposed service is au-

thorized, he intends to station a dispatcher and several pieces of equipment either at Barre or Montpelier, Vt., [fol. 18a] and to perform a "shuttle" service between the described South Dakota and Vermont origins. He now offers third-day delivery from Grant County to points in Illinois, Indiana, and western Ohio, and fifth-day delivery to upstate New York points. He estimates that an additional day will be required to serve the proposed New England points and from 5 to 8 days the southern and eastern destinations involved. The delivery time from Vermont would be approximately the same as that from Grant County.

In addition to his motor-carrier business, to which he devotes about 90 percent of his time, applicant also is connected with several other enterprises. He operates a garage at Alby, S. Dak., owns a farm which from time to time is leased to others, and is a wholesale distributor of feed and other products for the Carey Salt Company. Separate books are maintained for each of these businesses.

The Dakota Granite Company, of Milbank, S. Dak., has two quarries in Grant County at which granite is finished into mausoleums, monuments, and building forms. It ships to retail outlets by truck and by rail, principally in less-than-carload quantities. It uses applicant's service 2 or 3 times a week, and finds it very satisfactory. If such service were made available to the destinations here sought, this shipper would use it, in addition to other points, 7 or 8 times a year for the movement of shipments to the New England area. At the time of the hearing, it had orders on file from customers in Texas, Arkansas, North Dakota, West Virginia, and the New England States, all of which were accompanied by requests for delivery by motor carrier. It now has about 35 customers in Connecticut of an estimated 100 dealers in that State. This shipper is developing a new territory for its products in Texas, and desires to have motor service to that State. It does not, at first, expect orders from this new territory to be large enough to justify carload shipments, and fears that less-than-carload shipments by rail might prove to be too costly for the dealer to handle initially. It estimates that in the beginning only about 24,000 pounds a year would move to that particular area. At the time of the hearing it also had in effect a

contract under which it was shipping by rail substantial quantities of granite to a project in North Dakota near the Canadian border, for which motor-carrier service had been requested. Its customers pay the freight charges and have the privilege, if they desire, of designating the carrier to be used. In most instances, they request motor-carrier service for the movement of their small shipments, principally because they, particularly those at eastern points, are able to obtain split deliveries of small quantities at rates lower than less-than-carload rail rates. Furthermore, it has found that shipments moving by motor carrier arrive at their destinations in shorter time and usually without being dam- [fol. 19] aged. This shipper asserts that transportation rates play an important part in determining whether a particular transportation service can be used, especially when shipments are destined to points situated near other granite-producing areas. Also, the shipper would prefer to use applicant's service, rather than rail, because the cost of cartage to the rail siding (6½ miles distant) is eliminated, and the crating of the monuments need not be so thorough. It has not used the service of Dingmann in the past 2 years primarily because of rate considerations; however, it is willing to negotiate with intervener in this respect. Moreover, it prefers to use a carrier such as applicant whose equipment is stationed near its place of business; it has found that Dingmann takes 3 hours from St. Cloud, Minn., to pick up a shipment after being called, whereas it can obtain a truck from applicant in 30 minutes.

Osborne-Peterson, Inc., of St. Paul, Minn., a retail monument dealer, fabricates and letters granite monuments and markers. It receives both rough and finished granite from Barre, Vt., exclusively by rail, principally carload lots, and intends to continue using that service. Less-than-carload service is used when pool-car service is not available and there is a need for immediate movement of a particular shipment. Otherwise it directs that its shipments be held for a carload. From January 1 to June 13, 1952, it received a shipment which weighed 2,540 pounds, and consisted of 5 polished granite markers, separately crated, and which was in transit for 30 days. One of the crates was broken in transit, and all the markers were damaged to a degree ren-

dering them unsuitable for the purpose for which they were ordered. No other complaints were specified. As a rule, the transit time on less-than-carload traffic ranges from 3½ to 6 weeks. This shipper's interest in the proposed operation is motivated by its desire to receive small shipments more expeditiously and in better condition than at present, especially during the 2 months preceding Memorial Day, which is its busiest season. Under existing conditions, it has found that a monument should be delivered at its place of business sometime in March to assure Memorial Day installation. This shipper estimates it would use the proposed service, if authorized, 6 or 8 times a year for the movement of either truckload or less-than-truckload shipments.

A dealer at Hutchinson, Kans., retails public and private memorials to customers located generally in the southwestern section of Kansas. He purchases from 40,000 to 60,000 pounds of finished granite annually from manufacturers at Barre, Vt., which approximates 6 less-than-carload and 4 pool-car shipments. Pool-car shipments move over connecting rail lines to Kansas City where the car is broken down and from whence individual shipments are de- [fol. 19a] livered to the consignee either by local rail or motor service. Although over a long period of time, the average time in transit by rail is 10 days, a transit time of from 14 to 21 days is not uncommon. In recent years, consignee has experienced some damage in using rail service, but does not consider it to be undue. He is interested in the proposed operation because it will reduce the amount of crating now necessary to protect the granite, require less handling of the lading, and be faster than existing rail service. Generally, his peak period extends from March to June, with April 1 being the deadline for Memorial Day deliveries. Applicant has assured him of a 9-day service, at the most, from Barre, which would be advantageous as it would enable him to extend the deadline for deliveries by as much as 2 weeks in some instances. However, this shipper has made no investigation to determine if any motor carriers are now available. He considers that speed is an essential element in the transportation of granite from Barre, but does not expect the proposed service to alter his inventory situation. He would utilize applicant's proposed service principally for less-than-truckload shipments involv-

ing split deliveries, but would be willing to try other motor carriers.

A retail monument dealer at Fremont, Nebr., receives annually from Vermont origins 6 or 7 shipments of finished granite totaling about 25,000 pounds by pool-car and less-than-carload service. He considers that the proposed operation would be advantageous to him because it would be faster and more reliable than existing rail service and, thus, enable him to predict with some degree of accuracy when shipments would arrive. This is especially important during the peak season when delivery deadlines must be met. The proposed service would also permit him to compete more effectively with a nearby manufacturer who does his own finishing and thus can, with reasonable certainty, estimate when a particular order will be ready for delivery. In addition, he would be able to maintain a lower inventory and obtain transportation at a rate somewhat lower than that now in effect on less-than-carload rail shipments. He receives granite from sources in Minnesota by motor carrier and desires a similar type of service from Vermont origins. He has not investigated to determine whether any motor service is available from Vermont.

A retail monument dealer at Moberly, Mo., receives his granite products from Barre by rail, principally in less than carloads. The transit time for less-than-carload and pool-car shipments ranges from 7 to 18 days, with the average being 11.5 days. Because this dealer is located at the terminal point of a railroad, he considers rail service to be good. However, the proposed service would be advantageous, particularly during the peak season when expedi- [fol. 20] tious service is required. He receives granite by motor carrier from the "northwest and from the south" and finds such service very advantageous.

A monument dealer at Aberdeen, S. Dak., receives from 25,000 to 30,000 pounds annually of granite finished except for lettering, from Barre. Because of the comparatively small size of his business, he is unable to stock carload quantities, and it is not practicable for him to utilize pool-car service in conjunction with the other dealers because of the great distances between dealerships. Consequently, he receives all of his freight in less-than-carload lots. Shipments arrive in about 17 days, frequently with the crates broken,

and at times, with the monuments damaged. As this shipper has no facilities to repair damaged monuments, any piece of granite which is damaged must be reordered. He considers that the proposed operation with the inherent advantages of motor-carrier service would be beneficial to his business, particularly where he could hold shipments to accumulate a truckload. This shipper has made no investigation of available motor carriers.

A retail monument dealer at Loves Park, a suburb of Rockford, Ill., purchases about 25,000 pounds of custom-designed monuments a year from manufacturers at Barre. These monuments are ready for erection in the cemetery upon arrival, and any damage in transit necessitates remanufacturing and, of course, reshipment. All of this dealer's monuments move by rail, in less-than-carload lots, and are received monthly in quantities of three or less. The transit time of this traffic ranges from 3 to 5 weeks. In using rail service, this dealer has experienced damage, consisting in some instances of monuments marred by grease or oil, or cracked. Formerly, he had his shipments delivered directly to his place of business, but because of delays at the railhead, he discontinued that method of operation. He now picks up his own shipments, receiving an allowance therefor from the railroad in those instances where the latter was to provide the transportation. He is satisfied with such an arrangement, but would use the proposed service for the movement of all that traffic where delivery time is important. He has not investigated to determine whether or not other motor carriers are available.

Jones Brothers Company, of Barre, is engaged principally in the manufacture of granite monuments which are sold throughout the United States. In 1951, it shipped 1,600,000 pounds of granite to customers throughout the territory here involved, of which 600,000 pounds moved in less-than-carload quantities and the remainder in either carload or pool-car shipments. Carload service is admittedly satisfactory, but neither pool-car nor less-than-carload service is. Pool-car service is not deemed satisfactory in all respects because the first dealer to whom the consolidated shipment [fol. 20A] is consigned is held primarily responsible for all of the freight charges involved, and also the shipper must hold up delivery of orders until sufficient tonnage is ac-

cumulated to constitute the pool car. At times, this causes a long delay between the time the monuments are finished and the date shipped. This shipper is dissatisfied with less-than-carload service because of the length of transit time, the damage that occasionally occurs, and the cost involved. However, the usual transit time of less-than-carload shipments varies from 1 to 2 weeks. Of 117 dealers it presently supplies in the destination territory under consideration, 7 are in Minnesota, 2 in North Dakota, 6 in Montana, 9 in Colorado, 12 in Wisconsin, 31 in Illinois, 14 in Missouri, 12 in Iowa, 4 in Nebraska, 10 in Oklahoma, 3 in Arkansas, 5 in Texas, and 1 each in South Dakota and Louisiana. These dealers as a rule pay all the freight charges. This shipper finds that many of its small dealers, due to the disadvantages of less-than-carload service, are changing their buying habits and purchasing granite at centers where they are able to obtain faster and cheaper motor transportation. It considers the lack of motor service a severe handicap in competing with other producers of granite in Georgia and Minnesota which, it understands, have motor service available to the destination territory here considered. In the event the proposed operation is not authorized, it is considering instituting private-carrier operations for the movement of this traffic. It now uses certain motor carriers to New York and Pennsylvania destinations, but has not tendered these carriers any traffic to points in the considered area as it understands they do not provide service thereto. It is of the opinion that a grant of the application would eventually prove beneficial even to the railroads because it would be able to acquire new dealers who, as their businesses developed, might become carload purchasers. This shipper desires motor service on a daily basis, if possible, and has no objection to the consolidation of its freight with that of other Barre manufacturers. It would not expect applicant to transport a single 1,000-pound shipment to, for example, Greeley, Colo., nor does it expect such a situation to arise as it believes applicant will have tonnage from other shippers destined to that general area. It estimates that about 3,000 pounds of granite would be tendered to applicant daily, if his services are available. It supplies the above-mentioned dealers at St. Paul and Hutchinson, and

considers them to be typical customers with respect to their volume and type of business.

Rock of Ages Corporation quarries granite and manufactures finished monuments and markers which are distributed throughout most of the United States from 2 plants, 1 at Montpelier, Vt., 7 miles from Barre, and the other at Northfield, Vt., 22 miles from Barre. At the present time, it is endeavoring to build up its distribution to all of its dealers, [fol. 21] but particularly to those in the 16 States here involved, as they have a high agricultural population. In this regard, it has been this shipper's experience that farmers provide the best market for its products. At present it has 168 dealers throughout the considered destination territory to whom it ships over 5,000,000 pounds of finished granite a year, exclusive of slabs and unfinished granite which move in carloads. Of these dealers, 123 purchase in less-than-carload quantities and 45 in carload lots. Whenever possible, pool-car shipments are made, but such service is not satisfactory because it is difficult for the first dealer to whom all of the freight is consigned, to pay the charge on the entire lot. In addition, some dealers have difficulty in collecting promptly from the other dealers who are consignees of the balance of the car, and others find the task of unloading and reforwarding burdensome, particularly where they are not located on rail sidings. The producer holds shipments 1 to 4 weeks to accumulate a carload. Less-than-carload service, which averages 2 weeks to transit and sometimes longer, is inadequate because of delays and damage to merchandise. Its crating of merchandise is the same for both rail- and motor-carrier loading. During peak periods, such as Memorial Day, All Soul's Day, and Armistice Day delays make it difficult for its dealers to meet delivery dates. This shipper also is faced with competition from other granite manufacturers in the South and West, which, it understands, have motor service available. It utilizes motor service throughout New England and portions of New Jersey, Pennsylvania, and New York, but has never been able to obtain such service to points beyond Buffalo, N. Y. It sells to all of the supporting dealers, except the one at Moberly. It also is of the opinion that the instant proposal, over a period of time, would not only aid

its own expansion program, but would also be helpful to the railroads from both a tonnage and revenue standpoint. Moreover, it contends that there is a need for faster and more frequent service in order to give the smaller dealers who cannot now, because of the capital investment required, carry in stock a representative group of monuments. It is of the opinion that there are excellent opportunities for expansion in such States as Missouri, Oklahoma, Texas, Arkansas, Nebraska, Iowa, and Minnesota, and that its salesmen could successfully take advantage of these opportunities if the proposed service were available. In the event the authority sought is granted, it would tender to applicant 2 or more truckloads of from 24,000 to 30,000 pounds, each week.

The Barre Granite Association is a trade association consisting of 77 members, all located in the Barre granite producing area. Of its members, 5 are carriers, 5 do custom [fol. 21A] sawing and polishing of granite, and 67 are manufacturers of finished granite products. Included among the latter are the two shippers named immediately above. The function of the association is to represent its members in traffic and shipping matters. It does not sell granite but limits its activities to the consolidation of shipments and the arranging of pool-car service out of Barre for its members. During the period December 1, 1950, to December 1, 1951, this association arranged for the pool-car movement of 268 cars of granite to 900 dealers in 25 States. Of this tonnage, 156 cars were consigned to dealers in the States covered by this application, insofar as it proposes service from Vermont. The only motor service it selects is that used for local pickup and delivery service at each end of the movement. It favors a grant of the authority sought, and would assist its members in making use of it. It states that the source of supply of granite in Vermont is limited to the Barre area in Washington County, and Williamstown, Vt., in Orange County. The witness representing the association was also authorized to represent 18 individual members of this association for the purpose of stating that their position is the same as that set forth by the 2 preceding shippers. However, he was unable to present specific evidence concerning the tonnage each of the members ships or the particular points to which their traffic moves.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Texas and New Orleans Railroad Company, the Central Vermont Railway, Inc., and Dingmann presented evidence in opposition to the application.

Dingmann operates as a common carrier by motor vehicle, over irregular routes, of finished monumental and structural or partially finished granite from points in Grant County to points in certain Eastern and Midwestern States, including Maryland, Vermont, Connecticut, Massachusetts, and the District of Columbia. He has been hauling granite since 1941, and all of his drivers are experienced in the handling of that product. He maintains headquarters about 140 miles from Grant County and operates 10 pieces of equipment which, except during the 2-month period preceding Decoration Day, are not fully utilized. If the need arises for more equipment, he is able and willing to supplement his fleet. He offers 5- to 6-day service from points in Grant County to points in the States just named, and transports about 2 loads of granite a month from and to these points. Until about 18 months prior to June 13, 1952, the date of the first hearing herein, he provided service, without complaint, to the eastern territory here involved which he is authorized to serve for the supporting shipper, Dakota Granite Company. He asserts the latter company discontinued using his service solely because it considered his rates to be too high. [fol. 22] He desires once again to serve that shipper, stating that his service is similar to that proposed by applicant. He is apprehensive that a grant of the requested authority would deprive him of the eastbound traffic he is now transporting from Grant County.

Milbank is located on the main line of the Chicago, Milwaukee, St. Paul and Pacific Railroad from which point the latter renders direct service to Chicago where connections are made with other rail carriers for service to points and areas involved in the application. The Texas and New Orleans Railroad Company is primarily concerned with the proposed service insofar as it pertains to points in Louisiana and Texas, throughout which destination area it, in connection with other railroads, offers service. The Central Vermont Railway, Inc., originates granite traffic at four of its stations, namely, Barre, Montpelier, Northfield, and Waterbury, Vt., and competes with the Barre and Chelsea

Railroad Company for the outbound movement of granite from that area. All of these rail carriers are ready and able to handle the involved traffic and believe that a grant of the authority requested would detrimentally affect their revenues.

On the foregoing facts, we are unable to conclude that the public convenience and necessity require the proposed operation. It is seen that for one reason or another the supporting witnesses find fault with the presently utilized rail service. Actually, however, the evidence warrants the conclusion that the witnesses are reasonably satisfied with rail service except for the one complaint that all share, namely, that rail service is too slow. Nevertheless, it is the practice for the Vermont shipper to hold finished granite until they can accumulate a pool-car load in order that the shipments may move at the lower pool-car rate. This practice is followed with the knowledge and consent of the consignees, and the sole purpose therein is to take advantage of the lower rail rate. Less-than-carload rail service, while not as expeditious as the proposed service, is fairly good, but because of the higher rate involved this service is seldom used by the supporting witnesses. The testimony of the South Dakota shipper also indicates that its support of the application is largely motivated by anticipated cheaper transportation.

We have carefully considered applicant's arguments to the contrary, but are forced to conclude that the service presently available is reasonably adequate. The evidence indicates that the witnesses' main purpose in supporting the application is to obtain lower rates rather than improved service. It is well established that this is not a proper basis for a grant of authority, and the application, therefore, must be denied.

All of the contentions of the parties have been considered even though not specifically discussed. In view of our con- [fol. 22A] clusions herein it is unnecessary to consider the question of applicant's fitness to conduct the proposed service.

Upon reconsideration, we find that applicant has failed to establish that the present or future public convenience and necessity require the proposed operation, and that the application should be denied.

An order will be entered, vacating and setting aside the order of May 24, 1954, and denying the application.

Commissioners Cross, Arpaia, and Clarke dissent.

Commissioner Hutchinson, being necessarily absent, did not participate in the disposition of this proceeding.

[fol. 23] Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of February, A. D., 1955.

No. MC-93529 (Sub No. 2)

A. W. Schaffer Extension—Granite

It appearing, That on May 24, 1954, the Commission, division 5, entered its report and order in the above-entitled proceeding granting to applicant a certificate authorizing him to conduct certain operations as a common carrier by motor vehicle, in interstate or foreign commerce, and denying the application in all other respects;

It further appearing, That upon consideration of the record, and of petitions of protestants and interveners, for reconsideration, and of reply by applicant, by order of November 12, 1954, the proceeding was reopened for reconsideration on the present record;

And it further appearing, That reconsideration of the matters and things involved in this proceeding has been given, and that the Commission, on the date hereof, has made and filed a report on reconsideration herein containing its findings of fact and conclusions thereon, which report and the report of May 24, 1954, are hereby referred to and made a part hereof:

It is ordered, That the said order of May 24, 1954, be and it is hereby, vacated and set aside.

And it is further ordered, That said application be, and it is hereby, denied.

By the Commission.

George W. Laird, Secretary.

(Seal)

[fol. 23A] APPENDIX "C" TO COMPLAINT

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 16th day of May, A. D., 1955.

No. MC-93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE
(Revillo, S. Dak.)

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Joint petition of Barre Granite Association, Jones Bros. Company, and Rock of Ages Corporation, for leave to intervene oral argument and reconsideration, dated March 4, 1955;
(2) Petition of American Trucking Associations, Inc., for leave to intervene, reconsideration, and oral argument, dated March 9, 1955;
(3) Petition of applicant for reconsideration and oral argument, dated March 4, 1955;
(4) Reply of Eastern Railroads (except Chesepeake and Ohio Railway Company), protestants, dated March 16, 1955, to petition in (1) above;
(5) Reply of Eastern Railroads (except Chesapeake and Ohio Railway Company), protestants, dated March 16, 1955, to petition for intervention in (2) above;
(6) Reply of Eastern Railroads (except Chesapeake and Ohio Railway Company), protestants, dated March 16, 1955, to petition for reconsideration in (2) above;
(7) Reply of Eastern Railroads (except Chesapeake and Ohio Railway Company), protestants, dated April 8, 1955;
(8) Reply of certain Class I Western Trunk Line rail carriers, protestants, dated April 7, 1955, to petition in (3) above;

and good cause appearing therefor;

It is ordered, That said petitioners, Barre Granite Association, Jones Bros. Company, Rock of Ages Corporation, and American Trucking Associations, Inc., be, and they are hereby, permitted to intervene in said proceeding with the right to appear and participate in all further proceedings herein;

[fol. 23B] *It is further ordered*, That said petitions for reconsideration and oral argument be, and they are hereby, denied, for the reason that the discussion and findings of the Commission are substantiated by the record, and are in accordance with the law applicable thereto, and neither reconsideration nor oral argument is justified.

By the Commission.

Harold D. McCoy, Secretary

(Seal)

[fol. 26] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—
Filed September 30, 1955

The Interstate Commerce Commission, one of the defendants in the above-styled proceeding, for answer to the complaint says:

1.

The Commission admits for the purposes of this action the allegations of paragraph I.

2.

Answering the first section of paragraph II, the Commission admits the same, except that the Commission denies that plaintiff A. W. Schaffer, d/b/a Schaffer Transportation Company, is sustaining continuing and irreparable injury as a result of the reports and orders of the Commission.

Further answering the second section of paragraph II, the Commission admits the same, except that it denies the [fol. 27] allegation that its reports and orders adversely affect the interest of the members of the American Trucking Associations, Inc.

3.

Answering paragraph III, the Commission admits the same, except that it refers the Court to the report of the Commission, Division 5, dated May 24, 1954, and the report and order of the Commission dated February 7, 1955 (Appendices A and B to the bill of complaint) for a complete and accurate statement of its findings and conclusions.

4.

Answering paragraph IV, the Commission denies the allegations thereof and denies that it exceeded its powers and authority delegated to it under law in its determination of this proceeding.

The Commission avers that its findings in its report dated February 7, 1955, are supported by substantial evidence of record, which is set forth in said report.

The Commission further avers that the other allegations in this paragraph are argumentative in nature, to which no answer is required.

The Commission further avers that its report and order of February 7, 1955, fully complies with the provisions of the Administrative Procedure Act and with all other statutory and judicial requirements, and the Commission further avers that its action in this proceeding was neither unreasonable, arbitrary, capricious nor in abuse of its discretion.

5.

Except as expressly admitted herein, the Commission denies each and all the allegations in said complaint to the extent that they are inconsistent with the averments of this [fol. 28] answer or inconsistent with the findings and conclusions of the aforesaid report and order of February 7, 1955.

All of which matters and things the Commission is ready

to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, By: H. Neil Garson, Attorney

Samuel R. Howell, Acting General Counsel, Of Counsel

[fol. 29] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 31] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—
Filed October 6, 1955

Now comes the United States of America, defendant, and for answer to the complaint of plaintiffs filed in the above-entitled action, admits, denies and avers as hereinafter set forth:

I

The defendant admits the allegations of paragraph I of the complaint.

II

Answering the first sub-paragraph of paragraph II of the complaint, the defendant admits the same, except the allegation that the plaintiff is sustaining continuing and irreparable injury as a result of the report and orders of the Commission, which is denied.

Answering the second sub-paragraph of paragraph II of the complaint, the defendant admits the same, except the allegation that the report and orders of the Commission adversely affect the interest of the members of American Trucking Associations, Inc., which is denied.

III

The defendant admits the allegations of paragraph III of the complaint, except that it refers the Court to the

report and order of Division 5 of the Commission in Docket No. MC-93529 (Sub-No. 2, dated May 24, 1954, for a full and complete statement of its findings and conclu-
[fol. 32] sions. The defendant avers that the said report and order of Division 5 of the Commission, dated as aforesaid, is not the final report and order of the Commission. Defendant further avers that the Commission denied the said petitions mentioned in paragraph III, sub-paragraph 3, for the reasons stated in its order of May 16, 1955, which order is attached to the complaint as Appendix C.

IV

The defendant denies the allegations contained in paragraph IV including sub-paragraphs (a) to (i), inclusive, of the complaint.

V

The United States of America, further answering the complaint, alleges that all the parties to the proceeding before the Interstate Commerce Commission were given a full and complete hearing; that the findings and conclusions in said reports and orders under attack herein were and are fully supported and justified by the evidence submitted in said proceeding; and that in making said report the Interstate Commerce Commission carefully considered and applied the criteria fixed by law; considered and weighed the national transportation policy; and considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition required by law to be considered; and weighed, as well, each fact, circumstance and condition called to its attention by the parties to said proceedings by their respective counsel or otherwise; and that said report and orders were not made or entered arbitrarily or unjustly and contrary to law; and that in making said report and order the Commission did not exceed the authority conferred upon it by law; and this defendant denies each and every allegation contained in the complaint in conflict with the allegations of this paragraph; and except as expressly admitted in this answer this defendant denies each and all of the allegations of the complaint.

Wherefore, having fully answered, the United States of America prays that the relief sought in the complaint be [fol. 33] denied and the complaint be dismissed with costs assessed against the plaintiffs, and that it have such other, further and different relief as to the Court may seem meet, just and equitable in the premises.

Dated: September 28th 1955

James E. Kilday, Edward Knuff, Attorneys for United States of America, Department of Justice, Washington, D. C.

Stanley N. Barnes, Assistant Attorney General, Clinton G. Richards, United States Attorney

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Certificate of Service (omitted in printing)

[fol. 35] In the United States District Court
District of South Dakota, Northern Division

[Title omitted]

Motion and Notice of Motion of Intervening Railroads for Leave to Intervene—Filed December 27, 1955

The Akron, Canton & Youngstown Railroad Company and the other railroads named in Exhibit A attached hereto move for leave to intervene as parties defendant in this action in order to assert the claims and defenses set forth in their proposed Answer herein, copy of which is attached hereto, and to obtain the relief sought in such pleading, on the ground that they are entitled to intervene on their own motion and as of right (28 U. S. C. 2323).

The Akron, Canton & Youngstown Railroad Company, and the others named in Exhibit A attached hereto, By H. F. Chapman, Attorney

[fol. 36] APPENDIX A TO MOTION

Akron, Canton & Youngstown Railroad Company, The
Ann Arbor Railroad Company, The
Atchison, Topeka and Santa Fe Railway Company, The
Baltimore & Ohio Railroad Company, The
Boston and Maine Railroad
Central Railroad Company of New Jersey, The
Central Vermont Railway, The
Chicago & Illinois Midland Railway Company
Chicago and Northwestern Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railroad Company
Delaware and Hudson Railroad Corporation, The
Delaware, Lackawanna and Western Railroad Company, The
Denver and Rio Grande Western Railroad Company, The
Detroit and Toledo Shore Line Railroad Company, The
Detroit, Toledo and Ironton Railroad Company
Duluth, South Shore and Atlantic Railroad Company, The (P. L. Solether, Trustee)
Elgin, Joliet and Eastern Railway Company
Erie Railroad
Fort Dodge, Des Moines & Southern Railway Company
Great Northern Railway Company
Green Bay and Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Kansas City Southern Railway Company, The
Lehigh and New England Railroad Company
Lehigh Valley Railroad Company
Midland Valley Railroad Company
Minneapolis & St. Louis Railway Company, The
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)

[fol. 37] New York Central System
New York, Chicago and St. Louis Railroad Company, The
New York, New Haven and Hartford Railroad Company, The
New York, Ontario and Western Railway Company
New York, Susquehanna and Western Railroad Company
Norfolk and Western Railway
Northern Pacific Railway Company
Pennsylvania Railroad Company, The
Pittsburgh & West Virginia Railway Company
Reading Railway System
St. Louis-San Francisco Railway Company
St. Louis Southwestern Railway Company
Southern Pacific Company
Texas and Pacific Railway Company, The
Toledo, Peoria & Western Railroad Company
Union Pacific Railroad Company
Wabash Railroad Company
Western Maryland Railway
Western Pacific Railroad Company, The

[fol. 41] IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

[Title omitted]

ORDER PERMITTING INTERVENTION—December 27, 1955

The Akron, Canton & Youngstown Railroad Company, et al., having presented motion for leave to intervene as defendants in the above-entitled proceeding, it appearing to the Court that plaintiffs herein have been served with copy of said motion, have waived hearing thereon, and have consented to said intervention;

It is hereby ORDERED that the Akron, Canton & Youngstown Railroad Company and the other railroads named in Exhibit A attached to said motion are hereby permitted to intervene in said cause in accordance with Title 28, United States Code, Section 2323, and Rule 24 (a) of the Rules of Civil Procedure.

Dated: December 27th, 1955.

/s/ George T. Mickelson, U. S. District Judge.

(Seal of Court)

Attest: /s/ Roy B. Marker, Clerk. By Marguerite E. Casanova, Deputy.

(Seal)

[fol. 43] IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

[Title omitted]

ANSWER OF INTERVENING RAILROADS—
Filed December 27, 1955

The Akron, Canton & Youngstown Railroad Company and the other railroads named in Exhibit A attached hereto, interveners herein, for answer to the complaint state:

1.

Each intervener is a corporation duly organized and existing and is a common carrier of property for hire by railroad. Most of the interveners were parties in interest to the proceeding before the Interstate Commerce Commission (hereinafter referred to as Commission) in No. MC-93529 (Sub-No. 2), A. W. Schaffer, d/b/a Schaffer Transportation Company—Extension, Granite, opposing the relief sought by plaintiff, A. W. Schaffer, d/b/a Schaffer Transportation Company (hereinafter referred to as Schaffer), in the application described in paragraph III of the complaint. Each intervener is engaged in the transportation of freight for hire as an originating, intermediate or terminating carrier throughout the areas sought to be served by Schaffer, and each has a substantial interest in the question before the Commission by reason thereof.

2.

[fol. 44] 3.

Answering the first section of paragraph II of the complaint, interveners admit the same, except that interveners deny that plaintiff Schaffer is sustaining continuing and irreparable injury as a result of the Reports and Orders of the Commission.

Answering the second section of said paragraph II, interveners admit the same, except that interveners deny that the Reports and Orders of the Commission described in paragraph III of the complaint adversely affect the interest of the members of defendant, American Trucking Associations, Inc.

4.

Answering paragraph III of the complaint, interveners admit the same, except that interveners refer to and make a part hereof by reference the Report of the Commission, Division 5, dated May 24, 1954, and the Report and Order of the Commission, dated February 7, 1955 (Appendices A and B to the complaint) for a complete and accurate statement of the Commission's findings and conclusions, and to the entire record of the involved proceeding (No. MC-93529, (Sub-No. 2) before the Commission for the basis of the denial of the Commission of the aforesaid application.

5.

Answering paragraph IV of the complaint, interveners deny the same, and specifically deny that the Commission exceeded its powers and authority delegated to it under law in its determination of the involved proceeding.

6.

Further answering the allegations of the complaint, interveners aver that the Orders of the Commission complained of therein are valid and lawful in all respects, and that said Orders, together with the said Report of February 7, 1955, are fully supported and justified by substantial evidence of record in the involved proceeding; that [fol. 45] said Orders and Report were lawfully entered in the involved proceeding after the Commission had given due and careful consideration to every fact, circumstance

and condition brought to the attention of the Commission by the parties to said proceeding; that said Orders and Report are not illegal, unreasonable, arbitrary, capricious or discriminatory; and that said Orders and Report do not constitute an abuse of discretion by the Commission. Except as expressly admitted herein, interveners deny each and every allegation contained in the complaint.

WHEREFORE, interveners pray that this action be dismissed.

H. F. Chapman, Security Bank Building, Sioux Falls, South Dakota, Attorney for Interveners.

Of Counsel:

Carl Helmetag, Jr., Suburban Station Building, Philadelphia, Pennsylvania

James G. Lane, 226 South Station, Boston, Massachusetts

R. W. Cronon, 175 East Fourth Street, St. Paul, Minnesota

James R. Scoggin, 888 Union Station Building, Chicago, Illinois

Joseph H. Hays, 280 Union Station Building, Chicago, Illinois

Amos M. Mathews, 280 Union Station Building, Chicago, Illinois

Robert J. Bernard, 280 Union Station Building, Chicago, Illinois

James W. Nisbet, 280 Union Station Building, Chicago, Illinois

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[fol. 46] APPENDIX A TO ANSWER

Akron, Canton & Youngstown Railroad Company, The
Ann Arbor Railroad Company, The
Atchison, Topeka and Sante Fe Railway Company, The
Baltimore & Ohio Railroad Company, The
Boston and Maine Railroad
Central Railroad Company of New Jersey, The
Central Vermont Railway, The
Chicago & Illinois Midland Railway Company
Chicago and Northwestern Railway Company
Chicago, Burlington & Quincy Railroad Company

Chicago Great Western Railway
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railroad Company
Delaware and Hudson Railroad Corporation, The
Delaware, Lackawanna and Western Railroad Company, The
Denver and Rio Grande Western Railroad Company, The
Detroit and Toledo Shore Line Railroad Company, The
Detroit, Toledo and Ironton Railroad Company
Duluth, South Shore and Atlantic Railroad Company, The (P. L. Solether, Trustee)
Elgin, Joliet and Eastern Railway Company
Erie Railroad
Fort Dodge, Des Moines & Southern Railway Company
Great Northern Railway Company
Green Bay and Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Kansas City Southern Railway Company, The
Lehigh and New England Railroad Company
Lehigh Valley Railroad Company.
Midland Valley Railroad Company
Minneapolis & St. Louis Railway Company, The
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)
[fol. 47] New York Central System
New York, Chicago and St. Louis Railroad Company, The
New York, New Haven and Hartford Railroad Company, The
New York, Ontario and Western Railway Company
New York, Susquehanna and Western Railroad Company
Norfolk and Western Railway
Northern Pacific Railway Company
Pennsylvania Railroad Company, The
Pittsburgh & West Virginia Railway Company

Reading Railway System
St. Louis-San Francisco Railway Company
St. Louis Southwestern Railway Company
Southern Pacific Company
Texas and Pacific Railway Company, The
Toledo, Peoria & Western Railroad Company
Union Pacific Railroad Company
Wabash Railroad Company
Western Maryland Railway
Western Pacific Railroad Company, The

[fol. 48] CERTIFICATE OF SERVICE (omitted in printing)

[fol. 50] SECRETARY'S CERTIFICATE TO TRANSCRIPT (omitted in printing)

[fol. 52] **PLAINTIFFS' EXHIBIT NO. 1**

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-93529 (Sub. 2)

In the Matter of

A. W. SCHAFFER, d.b.a. SCHAFFER TRANSPORTATION COMPANY, Revillo, South Dakota.

Stenographic Notes

U. S. Court Rooms, St. Paul, Minnesota, Friday, June 13, 1952.

Met, pursuant to notice, at 9:30 a. m.

BEFORE:

RICHARD H. ROBERTS, Examiner.

APPEARANCES:

Donald A. Morken and J. L. Hetland, 100 First Soo Line Building, Minneapolis 2, Minnesota, appearing for applicant.

R. W. Cronon, 175 East Fourth Street, St. Paul, Minnesota, appearing for Class I Carriers in Western Trunk Line Territory, New England Territory Railroads, and Texas Railroad Association, intervenors in opposition.

Frank M. Coyne, 20 North Carroll Street, Madison, Wisconsin, appearing for William Dingman, d. b. a. Granite City Transfer, St. Cloud, Minnesota, intervenor in opposition.

[fol. 55] PROCEEDINGS

Exam. Roberts: Come to order, please.

There will be no smoking in the hearing room at any time.

The Interstate Commerce Commission has set for hearing at this time and place before Examiner Richard Roberts No. MC-93529, Sub No. 2, A. W. Schaffer of Reveillo, South Dakota, doing business as Schaffer Transfer Company, filed May 28, 1951, for authority to operate as a common carrier by motor vehicle (1) granite, manufactured and rough, from points and places in Grant County, South Daiota, to points and places in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, District of Columbia, Texas, Arkansas, Louisiana, Wyoming and North Dakota, traversing Virginia, New Jersey, Rhode Island and New Hampshire for operating convenience only; (2) granite, manufactured and rough, and building stone, from all points and places in Vermont to points and places in South Dakota, Minnesota, North Daiota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas and Louisiana, traversing New York, Pennsylvania, Ohio, Indiana and New Jersey for operating convenience only; and (3) steel saw blades, from Pittsburgh, Pennsylvania and points and places within twenty-five miles thereof, to points and places in Grant County, South Dakota; from Harrisburg, Pennsylvania, and points and places within twenty-five miles thereof, to points and places in Grant County, South Dakota; from [fol. 56] Chicago and Chicago Commercial Zone, as defined in 1 M.C.C. 673, to points and places in Grant County, South Dakota; traversing Ohio, Indiana, Illinois, Iowa, Minnesota and Wisconsin for operating convenience only.

In announcing your appearances, kindly state your name

and address, whom you represent, and whether or not you have been admitted to practice before the I. C. C.

Who appears for the applicant?

Mr. Morken: Donald A. Morkin and J. L. Hetland who is also in the room. We are both attorneys and we are both admitted to practice before the Commission. Our address is 1100 First National Soo Line Building.

Exam. Roberts: Are there any appearances for intervenors in support of the application?

Who appears for the protestants; I mean those who filed written protest prior to this. Who appears for the intervenors in opposition?

Mr. Coyne: Frank M. Coyne, 20 North Carroll Street, Madison, Wisconsin, appearing in opposition for intervenor, William Dingman, doing business as Granite City Transfer of St. Cloud, Minnesota. I am an attorney and registered practitioneer.

Mr. Cronon: R. W. Cronon, 175 East Fourth Street, St. Paul, Minnesota, appearing for the following intervenors in opposition, Class I Railroads in Western Trunk Line Territory, New England Territory Railroads, and Texas Railroad Association.

[fol. 57] Exam. Roberts: Any further appearances at this time?

The hearing, then, will begin.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Cronon: Mr. Examiner, may I make a short statement into the record at this time?

Mr. Morken: I have an amendment to the application, if it makes any difference in your judgment.

Exam. Roberts: Let's hear the applicant's amendment.

Mr. Morken: Mr. Examiner, the applicant moves at this time to amend the application, which amendment we think will limit and not expand it, and that is to eliminate all requests for authority to haul steel saw blades. The applicant requests authority to haul steel saw blades from three areas in East Pittsburg, Harrisburg and the Chicago Commercial Zone, and we move at this time to amend to strike all that request from the application.

Exam. Roberts: Are there any objections to the proposed amendment?

Mr. Cronon: Not I.

Exam. Roberts: In view of the fact that there are no objections and that is restrictive in nature, the amendment will be granted.

Mr. Cronon, you had a statement.

Mr. Cronon: I would like the record to show that on May 13, 1952, Mr. James G. Lane, manager of the Motor Carrier Bureau of the New England Territory Railroads, 226 South [fol. 58] Station, Boston, Massachusetts, wrote Mr. Paul Kyle, Chief, Section of Complaints, I.C.C., at Washington, requesting that there be a continued hearing in this matter at Montpellier, Vermont, and a later date to be set at the Commission's convenience.

Exam. Roberts: What did Mr. Kyle say?

Mr. Cronon: There has been no answer as yet on that.

Mr. Morken: If I may be heard on that, Mr. Examiner, after receiving a copy of Mr. Lane's letter to which Mr. Cronon just referred, on behalf of the applicant I wrote the Commission, with a copy, and objected to a continued hearing in any place, and made the offer to negotiate with Mr. Lane to take the testimony of his witnesses either in a stipulation or a deposition basis. I had no reply to that letter, and early this week I received a copy of a telegramed signed by W. J. Blanning, dated June [illegible], addressed to four individuals, Mr. Lane, a Mr. Manchester of the Central Vermont Railway, a Mr. Harry Morrow of the Berry and Chelseas Railroad, and a Mr. Clifford of the Ruthland Railway Corporation of Ruthland, Vermont, which reads, "Re tel, request for continued hearing, Montpellier, Vermont, MC-93259, Sub 2, Schaffer, denied."

Exam. Roberts: In view of the telegram written in the record by Mr. Morken and in the absence of anything to the contrary from Washington, the request for a continued hearing at this time will be denied.

Mr. Morken.

[fol. 59] Mr. Morken: I am ready.

Mr. Schaffer.

AUBREY WILLARD SCHAFFER was sworn and testified as follows:

Direct Examination.

By Mr. Morken:

Q. Will you state your name?
A. Aubrey Willard Schaffer.
Q. Are you the applicant in this proceeding?
A. Yes.
Q. Where do you live, Mr. Schaffer?
A. Revillo, South Dakota.
Q. And for the purpose of this application only are you engaged in the motor carrier business?
A. Yes.
Q. Do you have other businesses?
A. Yes.
Q. But there are no other motor carrier operations?
A. No.

Exam. Roberts: What are they, please, sir?

By Mr. Morken:

Q. Will you tell us what your various business interests are?
A. We have a garage where we do our maintenance. We run that separate from the motor carrier business.
Q. Where is the garage?
A. That is located at Alby, South Dakota.
[fol. 60] Q. Does that garage also serve the public generally?
A. Yes, to a small extent, mostly our own service, but it is open. We have one man that does nothing but outside work.
Q. All right. Other businesses?
A. Then we are engaged in the farming business. I own the equiment and the farm, but it is leased out from time to time on a three-year basis, and I have no connection with it outside of an income from it. I have no connections other than just the income from the farm. We have a full time man that takes care of everything on this farm.

Q. Are you connected with a salt sales business?

A. Yes. We are a wholesale distributor for the Carey Salt Company, that is, what I mean by that, we are a wholesale distributor handling the Carey products, I should say. We have our own equipment we use for distributing, and also a wholesale feed bus ness in connection with this salt business covering the northeastern part of South Dakota.

Q. Do you also run a regular route, general commodity freight line?

A. Yes, between Milwaukee and Revillo, South Dakota, the Twin Cities here, that is, Minneapolis and St. Paul, making regular trips weekly.

Q. And then you also have an irregular common carrier operation?

A. Yes.

Q. That is for the hauling of granite from Grand County, [fol. 61] South Dakota, to various states?

A. That is right.

Mr. Morken: We have some exhibits on that authority.

Exam. Roberts: They will be identified as Applicant's Exhibits Nos. 1, 2, and 3 for identification.

(Applicant's Exhibits Nos. 1, 2 and 3, Witness Schaffer, were marked for identification.)

By Mr. Morken:

Q. Now, Mr. Schaffer, referring to what has been marked as Exhibit 1, and you bear with me and I might speed this up a bit, this exhibit bearing the heading after the title of the Application Docket MC-93529, Sub 2, is a copy of your present irregular route authority authorizing the hauling of granite and is your original certificate here from which the actual described authority was taken?

A. Yes.

Q. Now, if you will refer to what has been marked Exhibit 2, and after the title of this proceeding——

Exam. Roberts: Off the record.

(Discussion off the record.)

Exam. Roberts: On the record,

Mr. Morken: Exhibit No. is the applicant's present outstanding authority embraced in Docket MC-93529, Sub 2.

Exhibit No. 2 is his present outstanding authority embraced in the original Docket MC-93529.

By Mr. Morken:

Q. Now, if you will refer to what has been marked as [fol. 62] Exhibit 3 and that is an order of the Commission dated June 22, 1951, which merely changes your trade name on doing business from A. W. Schaffer to A. W. Schaffer as Schaffer Transportation Company?

A. That is right.

Q. And this is all of the outstanding authority and voers all of your ICC regulated operations at the present time?

A. That is right.

Mr. Morken: I will offer Exhibits 1, 2, and 3.

Exam. Roberts: Any objection, gentlemen?

(No response.)

Exam. Roberts: Hearing none, they will be received in evidence.

(Applicant's Exhibits Nos. 1, 2 and 3, Witness Schaffer, were received in evidence.)

Exam. Roberts: This will be identified as Applicant's Exhibit No. 4.

(Applicant's Exhibit No. 4, Witness Schaffer, was marked for identification.)

By Mr. Morken:

Q. Referring to what has been marked as Exhibit 4, that is a black and white outlined map of the United States, and specifically calling atttention to the State of South Dakota and the little black mark that purports to be Grant County, which is the origin point of your existing authority, is that correct?

[fol. 63] A. That is correct.

Q. And the balance of the states that have horizontal lines are the states which are your destination states to which you now have authority, that is, from Grant County to all of the states with horizontal lines?

A. That is correct.

Q. And the states with vertical lines that are surrounded in red lines to make them stand out are the seven or eight additional states that are being requested in this application?

A. That is right.

Q. Grant County to those states is an extension of your existing service?

A. Yes.

Mr. Morken: With that explanation, I offer Exhibit 4 only to possibly clarify the scope of the application.

Exam. Roberts: Any objection to the receipt of Exhibit 4?

Mr. Coyne: No objection.

Mr. Cronon: None.

Exam. Roberts: It will be received in evidence.

(Applicant's Exhibit No. 4, Witness Schaffer, was received in evidence.)

Exam. Roberts: This will be identified as Applicant's Exhibit No. 5.

(Applicant's Exhibit No. 5, Witness Schaffer, was marked for identification.)

[fol. 64] By Mr. Morken:

Q. Mr. Schaffer, referring to what has been marked as Exhibit 5, that is also a black and white outlined map of the United States with slanting lines through Vermont and then a large numer of states in the middle United States and this exhibit is to purport your requested authority from Vermont to the, I believe it is, seventeen states in the middlewest?

A. That is correct.

Mr. Morken: I will offer Exhibit 5.

Mr. Coune: No objection.

Mr. Cronon: No objection.

Exam. Roberts: It will be received in evidence.

(Applicant's Exhibit No. 5, Witness Schaffer, was received in evidence.)

Exam. Roberts: It will be identified as Applicant's Exhibit No. 6.

(Applicant's Exhibit No. 6, Witness Schaffer, was marked for identification.)

By Mr. Morken:

Q. Will you identify what has been marked as Exhibit 6?
A. That is a equipment sheet as of the first of January, 1952.
Q. That list is all of the equipment that you operate in your so-called Granite hauling business, is that correct?
A. Yes.
Q. You own other equipment but it is not included in this series?
[fol. 65] A. Yes.

Mr. Morken: I will offer Exhibit 6.
Mr. Cronon: No objection.
Mr. Coyne: No objection.
Exam. Roberts: It will be received in evidence.

(Applicant's Exhibit No. 6, Witness Schaffer, was received in evidence.)

Exam. Roberts: This will be identified as Applicant's Exhibit No. 7.

(Applicant's Exhibit No. 7, Witness Schaffer, was marked for identification.)

By Mr. Morken:

Q. Mr. Schaffer, referring to what has been marked as Exhibit 7, and before I ask you some specific questions on it, this purports to be some various financial statements and profit and loss statements, and you have the original as prepared by your public accountant in Milbank, South Dakota?
A. Yes.

Q. And what has been marked as Exhibit 7 is a copy of that original?

A. That is right.

Q. Now, will you continue there and take it page by page and tell us what Exhibit 7 is, the first page?

A. The first page shows the balance sheet of the entire, I believe it is the entire, operation of all operations here combined. Page No. 2 shows——

[fol. 66] Q. Now, isn't that the operating statement for all of your operations?

A. Yes. Page No. 2, I think, is all of the operations combined, I should say, and page No. 1 is more or less a balance sheet, see.

Q. For all of the operations?

A. Page No. 2 is all operations, total year's operations, 1951.

Q. No. 3?

A. Page 3 shows our farming operation, the income off of the farm operation, for 1951. No. 4 is the Granite trucking operation, and No. 5 is our grain and salt operation. It is feed and salt, it should possibly be, but grain explains it.

Q. A question on that; do you haul salt, grain and feed as a private carrier; that is, hauling your own merchandise?

A. Hauling my own merchandise.

Q. And in that operation do you use trucks that you do not use in your Granite operation?

A. Yes.

Q. All right, and the last page?

A. The last page shows our, what we call our, freight truck from Milbank, Revillo to the Twin Cities and back.

Q. That is your regular route, general commodities?

A. Regular route, general commodity operation.

Q. Now, Mr. Schaffer, I know that in typing this apparently the young lady in our office did not add one more [fol. 67] page, which was an operating statement covering the garage business.

Mr. Morken: If I might read into the record on this, it shows a total—I can submit copies as a ratified exhibit.

Exam. Roberts: Off the record.

(Discussion off the record.)

Exam. Roberts: On the record.

Mr. Morken: Mr. Examiner, we failed to have typed up the operating statement for 1951 covering the applicant's garage business. I have a copy of it here in front of me, and in round figures it shows a net loss of four thousand dollars.

If there is no objection, I could submit a copy of that as a ratified exhibit, and until then tie it in with the other operating statements that are now included in Exhibit 7.

Mr. Cronon: Did you say it showed a net profit or net loss?

Mr. Morken: Net loss.

Exam. Roberts: You will be permitted ten days in which to file a ratified exhibit showing the garage operation, and it will be due on or before June 23, 1952, and serve copies to all parties of record.

By Mr. Morken:

Q. Mr. Schaffer, again referring to Exhibit 7, it is dated December 31, 1951, covering that year, the year 1951, do you have available a later summary or exhibit of your financial condition?

A. No, we don't, because we have our auditor in every three months, but he makes a report only every six months, [fol. 68] and that report, of course, will be made the first of July. Therefore, it doesn't give us time. We don't have him make up a report but only every six months.

Q. You are not a Class I carrier?

A. No.

Q. The information that is contained in Exhibit 7, was that prepared from your company's books and records at your direction?

A. Yes.

Q. And to the best of your knowledge is it true and correct?

A. That is right.

Mr. Morken: I will offer Exhibit 7.

Exam. Roberts: Will you care to see that? I will defer ruling until after cross-examination.

Mr. Coyne: I wish we could.

By Mr. Morken:

Q. One more question, Mr. Schaffer, taking the balance sheet, that is, the first page, and let's take the first two or three items, the cash on hand, that is the current cash from all of your various enterprises?

A. On what page?

Q. The first page of Exhibit 7.

A. Yes.

Q. Take the trucking equipment and cars, that covers the trucks in your dry freight and your granite operation and your salt and grain operation?

[fol. 69] A. That is correct.

Q. Are you able to make a breakdown at this time to divide the amount of trucks that are dedicated to any one particular operation, value-wise?

Q. No, I wouldn't be in a position to do that.

Q. Do you have any plan of continuing business either in the same manner or different manner, if tis proposed authority is granted?

A. We intend to incorporate the trucking of granite and dry freight into one business, incorporate it with my father. He intends to put in about fifty thousand dollars into the business and figures on incorporating, just the trucking end of it such as granite and the dry freight.

Q. At the present time you operate the trucking end of it alone?

A. That is correct.

By Exam. Roberts:

Q. What percentage of your time is devoted to the motor carrier operations as compared wo the private enterprises?

A. About ninety percent.

By Mr. Morken:

Q. Now, other than what we have covered, do you have any other interest in any motor carrier operations, either contract or common?

A. No, I haven't.

Q. According to Exhibit 6 you are operating about nine, I believe it is, tractor-trailer units and an extra tractor in [fol. 70] the granite hauling business at the present time?

A. That is right.

Exam. Roberts: How many vehicles do you have all together in your motor carrier operations, broken down into tractor and trailer units?

The Witness: There is approximately fourteen, I think it is fourteen, complete units and one spare tractor.

Exam. Roberts: That is your total number of vehicles in the motor carrier operations?

The Witness: Yes.

Exam. Roberts: Are any of these vehicles used in your private carrier enterprise?

The Witness: Four of those.

Exam. Roberts: This will be identified as Applicant's Exhibit No. 8.

(Applicant's Exhibit No. 8, Witness Schaffer, was marked for identification.)

By Mr. Morken:

Q. Mr. Schaffer, referring to what has been marked as Exhibit 8, will you tell us what that is?

A. This is a copy taken from our records of three of the granite trucks hauling granite for the year of 1951, showing the dates, the destination, and the number of stops per load.

Q. Now, do you have the company record here with you that this exhibit was made up from?

A. Yes.

[fol. 71] Q. Why did you take only three trucks?

A. Well, it is quite a lengthy deal. We have three more that we had ready to register because of the fact that it would make a long extensive thing, and this covers about, or shows a picture of the operation, and, in other words, it shows about fifty percent of our haulings.

Q. On the fifty percent, this exhibit shows approximately fifty some haulings?

A. Yes.

Q. How many did you have total in all your trucks last year?

A. We had one hundred fifty-seven loads last year.

Q. From Grant County?

A. From Grant County, South Dakota, to the states.

Q. Now, is it not a fact that the way you keep your records in a book you keep the records of three trucks in one book?

A. That is right.

Q. And this is a copy of the haulings taken from that book?

A. From the one boo, yes.

Q. Now, will you take the book that this exhibit was made up from, and can you find the haul that s oss February 16, 1951, as to how the work was done, where you made one stop, let's——

Mr. Coyne: May it please the examiner, I don't know how material all of this is, and if we are going to spend any considerable time on it, I object to it on the grounds that it is immaterial on what he has hauled in the past.

[fol. 72] Exam. Roberts: I was just going to ask what the materiality of this exhibit is.

Mr. Morken: Only to show that we are operating all daily, at least weekly, and maybe several times weekly in most of these states, particularly eastern states.

Exam. Roberts: These are operations that are now performed under your existing authority?

Mr. Morken: That is right.

Exam. Roberts: And this shows the frequency of service?

The Witness: That is right.

Exam. Roberts: Doesn't the exhibit speak for itself?

Mr. Morken: I was only going to explain the—I will offer the exhibit.

Mr. Coyne: I have no objection, but I do want to ask some questions on it.

Exam. Roberts: We will withhold the ruling on it.

By Mr. Morken:

Q. Mr. Schaffer, about how frequently do you at the present time get trucks down in, let's say, New York or Pennsylvania?

A. At the present time it averages——

Mr. Coyne: We object to that as being immaterial.

Exam. Roberts: Let's hear what he has to say.

Mr. Coyne: May it please the examiner, there is no application pending here today to perform any transfer to Pennsylvania or New York, and neither is there any application to perform transfer from——

[fol. 73] Exam. Roberts: The application does cover the New England States and certain surrounding states.

Objection is overruled.

A. At the present time we have an average of about one load a week.

By Mr. Morken:

Q. Do you load those trucks coming back from the eastern points at the present time?

A. At the present time the only way we load them is lease them to a licensed motor carrier that has a certificate covering the authority for whatever he may give us to haul.

Q. In your present operation are you operating empty trucks back from eastern destinations or from southern destinations?

A. Quite frequently, yes.

Q. Now, if this authority is granted and you are authorized to haul from Vermont to the states that you requested, to the middle part of the United States, do you have any plans as far as the amount of equipment that you would dedicate to the service and how it would be run?

A. Yes, we intend, if this application is granted, to station a dispatcher at Vermont.

Q. That will be a company employee?

A. That will be a full time company employee, and he will have three new pieces of equipment stationed there that will be under his jurisdiction at all times, and it will work as a shuttle system.

[fol. 74] Exam. Roberts: What point in Vermont?

The Witness: He would be either at Monpellier or Berre. I presume it would be at Berre.

By Mr. Morken:

Q. You mentioned a shuttle system?

A. Well, when we were in the east we would pick up the Berre granite coming back to the midwest area, and then the same truck would take a load of South Dakota granite back into the east, and providing that if the business warranted more trucks from one place to another, why, then we would have to use a sytem similar to what we use now.

Q. On your present hauling do you get notice from the shipper ahead of time as to what hauls you are going to get and where they are going?

A. Yes, at the present time, in the past three years, two or three years, that we have been hauling in granite we usually know a week in advance, sometimes two weeks in advance.

Q. With that week's notice would it be possible to establish this shuttle service that you talked about as far as either consigning empty trucks on into Vermont or if there is no load in Vermont to bring them back from some haul that you are presently taking?

A. Yes, with a one-week notice it would give us ample time to keep them constantly loaded.

Q. On your present operation with regard to the speed [fol. 75] of delivery will you give us an example of how long it takes you to operate a truck ffoj some point in Grant County, South Dakota, to some eastern destination?

A. Well, on Illinois, Indiana, and Western Ohio we figure third-day delivery.

Q. Then, would that truck leave, let's start with Monday, if the truck left your home Monday where would it go?

A. Well, our route is that we have our driver leave South Dakota when he comes to work he has had his instruction to drive to possibly Moston, Wisconsin, unless he gets tired before that and he is instructed to sleep. We make it a point to stop in Moston, and then the next day he is to remain there until he gets his eight or ten hours' sleep, and he goes on from there until he gets to the south side of Chicago, and then——

Q. On that point, do you have a setup available at the present time there for your drivers?

A. We have at Moston, and we have at Dyer, Indiana, that is outside of Chicago, and then he proceeds, if he has a load for Indiana or Ohio, he proceeds to deliver, and he is to work his ten hours, and then tie up wherever he may be.

Q. That would be the third day?

A. That would be the third day.

Q. And if the load was going to New York or Pennsylvania or this proposed service into the east, how much longer?

A. It takes approximately two days more to go to up-[fol. 76] state New York. That driver being away from home is schooled before he is hired, instructed never to exceed the I.C.C. rules on driving, and it is one item that we have enforced very, very strictly. We have lost a few good men on it. We try to make it hold, because the truck is away a good deal of the time. After he leaves Chicago, then he is instructed to drive only his length of time that he is allowed to drive, and then secure a hotel room.

Q. You can cover New York on the fifth day, then?

A. Yes.

Q. And would that include Connecticut or Massachusetts or would that take additional time?

A. Yes, because it is a little bit further.

Exam. Roberts: One extra day?

The Witness: Approximately.

By Mr. Morken:

Q. Would it be the sixth morning.

A. About the sixth morning, depending on the road conditions, but it would take approximately six days.

Q. Last year on your one hundred and fifty loads, and I don't know if you can give me this answer, but do you know the approximate tonnage that you transported?

A. No, I couldn't bive it to you offhand.

Q. Do you know how many claims your company has had for damage or breakage?

A. We have had two claims in 1951, and the total amount [fol. 77] was about one hundred and forty-one dollars.

Exam. Roberts: Before we get off of this time in transit,

what would be your estimated time to points such as Maryland and West Virginia and District of Columbia?

The Witness: Well, that would approximately be five to eight days.

Exam. Roberts: That would be about the same time as upstate New York?

The Witness: About the same time as upstate New York.

Exam. Roberts: How about Oklahoma and Texas points?

The Witness: Well, our Texas operations being a large state, it would depend a lot on the—the northern part would be approximately a day earlier than the extreme southern part.

By Mr. Morken:

Q. How many days to the northern part from Grant County?

A. Approximately four days.

Q. And on that, if you are granted this authority, would the time it takes for your delivery from points in Vermont back to the middlewest be approximately the same?

A. It would be approximately the same from the time we was loaded, yes.

Q. That is, then, Illinois, the most eastern edge; you would be in there the fourth day?

A. That is right.

Q. And as you go further west to Montana or to Texas [fol. 78] it would be the fifth to sixth day?

A. Well, if you went out to Montana or Texas it would probably run into the seven days as it is somewhat further than what the destination east would be.

Exam. Roberts: You are not authorized to serve Montana, are you?

The Witness: Serving out of Grant County.

Exam. Roberts: You are speaking of the return movement?

The Witness: Yes.

By Mr. Morken:

Q. You mentioned your one hundred and forty some dollars in claims last year. Is granite susceptible to damage or breakage?

A. Yes.

Q. And is that something peculiar that makes it susceptible to damage?

A. Yes, our experience with granite is it chips very easily and the more you handle it the more times that you are liable to chip it. They carry what they call a line on the edg that chips very easily in moving it from one spot to another; it is damaged very easily. It is very easily damaged by certain chemicals or items such as grease, and oil is very damagable to granite, and we have overcome our breakge by specific loading.

Q. Will you describe your loading?

A. When we load a load of granite usually we have an [fol. 79] experienced driver that is familiar with it or experienced man goes in from the plant. Our dispatcher loads it. He is familiar with it, being connected with me as long as I have been in the business, and he so arranges this granite on this load so that if he has a one-stop load, it is very simple, I would say it is simple, to load, but on a two, three, four or five-stop load it is fairly hard to load, because you have to place the granite so it doesn't shift on the truck after you have taken off some pieces.

Q. Is it possible to load it so that all of your first stop will come off the back of the truck?

A. No, we don't load it that way. We load it so that it comes off the middle of the truck, that is the way we load it, that the weight distribution is equal upon the axles of the tractor trailer unit.

Exam. Roberts: Are these trailers underslung?

The Witness: No.

Exam. Roberts: Do you use cranes for loading?

The Witness: Yes, skids and hoists for unloading.

By Mr. Morken:

Q. In addition to your skids for unloading, do you have additional precautions to protect it from damage?

A. On the highly damageable stuff, yes, we have three foam rubber pads that we usually place in the bottom of the skids on particular stuff that is highly damageable.

Q. So that when the granite slides down the sides it doesn't hit it?

[fol. 80] A. In the event it gets away from the driver, that if it did hit the ground, it wouldn't be dragged. We, of course, don't use that or all the operation, but the biggest percent of it, and we also have a hoist that is equipped to fit on four of the different trailers and be transferred from one traler to the other, depending on the load, if i is a special piece that we know we have to unload ourselves or the driver has to unload, we send this hoist, and it operates with hydraulics, and a driver can pick up approximately a ten thousand pound piece and swing it off himself. Very seldom that you have those shipments, but you do have them, and in the past they have been quite frequent, because it is very seldom it is either out on the one truck or the other, and with our present operation we are getting some, but we would have to put on additional equipment for that to handle any more.

Q. What is the size of these loads that are offered to you?

A. Well, they vary with the manufacturer.

Q. What is your minimum in your tariff?

A. Twenty-four thousand.

Q. What is the maximum you carry?

A. Thirty-three.

Q. Do your loads run between those weights.

A. Yes.

Q. Now, are they predominately one-load one-customer [fol. 81] shipments that you are presently hauling or are they so-called split delivery shipments?

A. The biggest percentage are split delivery shipments.

Q. What percentage of the granite that you haul presently is classified as rough and how much is finished?

Q. I would say eighty per cent is finished granite, approximately ten is semi-finished, and ten per cent rough.

Q. And the granite that you haul, do you know the use of it or the purpose that it is ultimately going to be used for?

A. Yes, it is usually used for monuments or building stone.

Exam. Roberts: Is there any different between the type of granite you haul eastbound and that westbound?

The Witness: Is there any difference?

Exam. Roberts: Is there any recognizable feature?

The Witness: It is the same, practically the same, kind of granite, outside of the South Dakota is called red granite and the eastern granite that we propose in this authority is what they call a gray granite. It is a difference in color, but as far as the rock is concerned, it is practically the same.

Exam. Roberts: What about the building stone that you propose to transport?

The Witness: It would be the same kind out of there as it would out of South Dakota.

Exam. Roberts: I don't see any building stone in South Dakota on your application. Would that be classified as granite?

[fol. 82] The Witness: Yes.

Mr. Morken: Mr. Examiner, I do not know why the application says granite, smooth and rough, and building stone. I believe, as the witness just said, it is all granite, and that is all that we are seeking to haul.

Exam. Roberts: I want the record to be clear on that. Continue.

By Mr. Morken:

Q. Who do the monuments that you haul go to?

A. Usually all goes to monument dealers.

Q. What type of monument dealers?

A. Well, out in South Dakota operation we have hauled to both small and large, the biggest percent is to small operators.

Q. Where are they usually located?

A. Well, they are located all over. You never know where you might find a monument dealer. He may be located downtown; he may be located near a cemetery or the edge of town. We find that the biggest percent of our new monument accounts are the fellows that are rebuilding their places. They are putting them out on the edge of town, our near a cemetery. We find that that has been quite commonly practiced.

Q. As far as asking for state-wide authority here in your destination territory, would it be possible to limit this authority that you request to, say, particular cities

or towns rather than state-wide, would that be practical in your operation?

[fol. 83] A. No, it wouldn't be practical because of the fact that probably we would take a small town, you could just about name any small town, and one particular town is in Ohio that we deliver to, and the dealer has a shop downtown, located downtown, and he unloads monuments out in the county. He has a display lot out in the county, and he delivers them out of town.

Exam. Roberts: Could any of this granite that you propose to transport be used in the construction of buildings?

The Witness: Yes.

Exam. Roberts: Do you transport any of that type of granite at the present time?

The Witness: Yes.

By Mr. Morken:

Q. Do you kow from your past experience or can you give us any idea of the number of consignees that you serve who are on railroad sidings or on railroad tracks?

A. At the present time I only know of three.

Q. In all of your present fifteen or sixteen states, is that correct?

A. That is right.

Q. Your shipper, where you are now hauling from in Grant County, is he located on a rail siding?

A. No; seven miles.

Q. How far?

A. Seven miles from a railroad siding.

Q. And you have a witness from that company here?

[fol. 84] A. Yes.

By Mr. Cronon:

Q. Seven miles from where?

A. From Milbank, South Dakota.

Exam. Roberts: Is Milbank your point of origin?

The Witness: Yes.

Exam. Roberts: Is this granite to be picked up from quarries or from a particular warehouse?

The Witness: Well, there are three fabricating plants out at South Dakota, and there is one of them that has the quarries out in the country and has the finishing plant in town. The other particular one, they are serving at the present time has both the quarry and the finishing plant in the countr, it has the finishing plant right next to the quarry.

By Mr. Morken:

Q. And what would be the situation in points in Vermont?

A. Well, the situation in Vermont, I think, would be practically the same.

Mr. Morken: Mr. Examiner, we have a witness here from Vermont who will cover that.

I am just about through with Mr. Schaffer.

By Mr. Morken:

Q. But if this authority is granted will it affect your existing operations service-wise or profit-wise?

A. Both service-wise and profit-wise.

Q. Take service-wise, will it impair your existing service or improve it?

[fol. 85] A. Improve it.

Q. Why is that?

A. Because of the fact that we would have more equipment, there will be more trucks moving back and forth, and it would improve the service because it has always been a problem on our New York and Pennsylvania hauls to get a return load out of Pennsylvania or New York to make it a profitable operation, but yet the shipper demands and also seems as though the fellow who receives the granite demands truck shipment, and unless we supl it, they have been using some of their own equipment to supply that, and we have lost a considerable amount of business this last year because of the fact that we didn't supply some of the eastern states or couldn't supply some of the eastern states.

Q. Let me ask you this, profit-wise it would follow that

it would eliminate empty miles and therefore gain more revenue for the same number of miles operated?

A. That is right.

Q. Are there any other common carriers that you know of located in the Grant County area or with equipment stationed there to haul this granite?

A. There is no equipment stationed in Grant County at the present time, as there is other authority.

Q. Do you know of any motor carrier that is presently operating from the Berre area in Vermont back to these states that you request?

[fol. 86] A. No, I know of none.

Mr. Morken: That is all I have of Mr. Schaffer on direct. I would like to ask your cooperation to withhold cross. I have two witness, one from South Dakota and one from Vermont, and I promised them that I would like to get them out by noon. Mr. Schaffer, of course, will be here all day.

Exam. Roberts: Let's take a five-minute recess.

(Short recess.)

Exam. Roberts: On the record.

Mr. Morken: I will call Mr. Osborne.

JOSEPH E. OSBORNE was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Will you state your name?

A. Joseph E. Osborne.

Q. Where do you live, Mr. Osborne?

A. St. Paul.

Q. What is your business?

A. Osborne-Peterson, Inc.

Q. What is that company?

A. It is a retail monument establishment, and we manufacture and sell at retail.

Q. And for clarification here, will you describe what

the term "manufacture" involves in the monument business?

A. We fabricate and letter monuments and markers.

[fol. 87] Q. Inbound to your plant do you have both rough and finished granite?

A. We do.

Q. You are aware of this application and its scope and what is proposed?

A. Yes, I am.

Q. Well, the applicant has authority from Grant County to Minnesota, but do you have any interest in his proposed service from Vermont to Minnesota?

A. Yes, I do.

Q. And what is that interest?

A. We would like to be able to get our Vermont granite here more quickly and in better condition than is the case at present.

Q. How are you receiving it at the present time?

A. A very large share of it in railroad carload.

Q. I gather you are one of the larger dealers that can regularly take carload lots, is that correct?

A. We are one of the larger dealers in that area, not nationally.

Q. Will you continue to use a carload if this service is granted?

A. Yes, we will.

Q. As far as less than carload lots is concerned, what size shipments were you taking by the weight or packages or dimensions?

Q. Well, occasionally we want to get something in a hurry, and we don't want to order a carload, and there [fol. 88] isn't always a pool car coming into this area, and in those instances we would like to get something in a hurry of less than carload for a specific order.

Q. Do you understand that at present your less than carload shipments are generally held until there is enough total less than carload shipments in the east to make up a carload lot?

A. Not always, sometimes they are shipped at the discretion of the shipper who wants to get them out of his plant, and sometimes at our own direction.

Q. Have you received any less than carload shipments lately?

A. Yes, we have received one this year.

Q. Do you know when that was shipped and when you received it?

A. Yes, I do. I have the bill of lading on it. It was shipped, the bill of lading is dated April 28, and it was received in St. Paul on May 27.

Q. What was its size and weight and how many pieces were in that shipment?

A. A very small shipment, five crates.

Q. The total weight?

A. Twenty-five forty.

Q. Two thousand five hundred and forty pounds?

A. Right.

Q. What was the condition of that shipment when you received it?

A. Four of the crates were satisfactory in good condition. One was broken up. There was evidence that it had [fol. 89] been crated, but the pieces were lying there, and each of the five pieces of polished granite were damaged, of the five pieces in that freight, they were markers.

Q. Does this damage have any peculiar affect on your business as far as replacing that stone or——

A. In this instance it wasn't serious, because they were ordered markers. We were not able to use them for the purpose they were intended. We were not able to use them for the size they were intended. In other words, they would not have filled the orders for which they were intended.

Q. Would the availability of this five, six or possibly seven-day delivery by Mr. Schaffer be of a benefit to you in your business?

A. Greatly so.

Q. Are you able to give us any indication of about how frequently you would use it?

A. Well, I think that we would use it perhaps a half a dozen times a year. I wouldn't know exactly. The service has never been available, so I haven't given any particular thought to it.

Q. Are you aware of any other motor carrier service such as is proposed from the Vermont area to——

A. No, I am not.

Q. No other carrier has ever solicited you?

A. Never.

Q. Is there something peculiar why you want granite from Vermont?

[fol. 90] A. Yes. Our company has been in business since 1880, and we have used Berry granite since that time. Naturally we built up a business in that particular material. There is no other material close to it. Some people simply want Berry granite, period.

Q. The type of granite we have in Minnesota and South Dakota is not comparable?

A. It is an entirely different color type and suited to an entirely different type of monument in my opinion.

Exam. Roberts: Does this granite originate at Berry, Vermont?

The Witness: Yes, sir, it is quarried there and shipped from there.

Exam. Roberts: If the applicant was given authority he would pick it up at the town of Berry or at the quarry?

The Witness: I would assume that he would pick it up at Berry, as the quarries are at Barry.

Exam. Roberts: It would be at a fabricating plant?

The Witness: Not necessarily. We get some material in the rough from the quarry, and we get some complete fabricated. In other words, we get slabs, we get rough stock, and we get finished monuments, all three, and all three originate at Berry.

Exam. Roberts: Is there any particular rush about the rough material that you get?

The Witness: Sometimes. Like I know other business [fol. 91] people may postpone a decision, but once made, they want delivery very soon, that is, most people do.

Exam. Roberts: You have facilities at your place for finishing?

The Witness: Yes, sir.

By Mr. Morken:

Q. Are there certain peak seasons in your business?

A. There certainly are.

Q. Will you explain what they are?

A. Our business is extremely quiet in the selling end from November until April, and obviously in this area, due to weather conditions, from the first of December until May we make almost no deliveries and not too many sales percentage-wise. From April until Memorial Day we are really rushed in our place. We work seven days a week and ten hours a day. People want their marker for Memorial Day. The death may occur in October, and they will not make a decision until the first of May, and also possibly on Mother's Day, and they certainly want it for Memorial Day. Throughout the sumer we are moderately busy, and there is a rush again in the fall because of the frost and the fact that we cannot install monuments after the ground is frozen, and the foundations cannot be installed. Cemeteries put in the foundations and will not place them after the ground is frozen. It is a seasonable business, and that is particularly true in this area because of the short summer.

[fol. 92] Q. At the present time and with your present services do you have a cut-off date on orders that you can place for Berry granite prior to Memorial Day?

A. I don't understand your question.

Q. If you want a monument to place for Memorial Day do you have to allow for any specified period of time in order to get it?

A. We certainly do.

Q. How long is that?

A. Depends on the size of the monument and the conditions in Berry, whether they have a large number of orders on hand or not. I would say if the thing is even a moderately sized monument you would have to order it in March to assure Memorial Day delivery.

Q. Do you allow a period of time for transportation on that?

A. Yes.

How long?

A. Well, it varies awfully much. We had a carload that came through this year in seven days; and we have had carloads that come through in two and a half weeks. Less

than carloads, I think that we have never had anything through in less than three and a half to six weeks.

Q. Would the availability of this service help you in that particular?

A. It would be extremely helpful at that particular time. I think that would be the most important help the company [fol. 93] could give us would be in that month or two before Memorial Day.

Q. Would it be that you would be ordering additional orders that you are not now ordering because of this delay?

A. Yes, it would. We would be able to make delivery when otherwise we could not.

Q. And would the same thing be true on other rush days, such as Mother's Day?

A. Yes, it would, and in the fall, in October and November when we are trying to beat the winter deadline.

Q. Have you ever used Mr. Schaffer's service?

A. Yes, I am quite sure we have had shipments from South Dakota, and I am quite certain that we have used his service.

Q. I gather at least as far as you remember there were no complaints or nothing wrong with the service?

A. No.

Q. Do you remember that it was satisfactory?

A. I do remember that it was satisfactory.

Mr. Morken: You may examine.

Cross examination.

By Mr. Coyne:

Q. Mr. Osborne, you are interested primarily in nothing more than just transportation by truck of your commodity from Berry, Vermont, to your place of business in St. Paul, isn't that correct?

A. I am interested in the speed and safety of transportation. I don't care whether it comes by truck or rail.

[fol. 94] Q. Now, Mr. Osborne, if the Granite City Transfer Company of St. Cloud, Minnesota, would make available to you a service comparable to that described by the applicant whereby you could call them and say, "I have a

load of granite I would like to have you pick up at Berry, Vermont" and have them deliver it to you in five or possibly six days, would that service satisfy you?

A. I would think so.

Mr. Morken: May I interrupt for a moment?

The Witness: I have never used that particular service, of course.

Mr. Morken: Mr. Examiner, if Mr. Coyle could ask this question, I am not aware of Mr. Dingman's authority from Vermont to this area, and, first, does he have such authority?

Mr. Coyne: Hes, he has such authority.

Mr. Morken: From Vermont to what states?

Mr. Coyne: I intend to develop it later.

Exam. Roberts: Off the record.

(Discussion off the record.)

Exam. Roberts: On the record.

A. I wasn't aware that that was available, sir.

By Mr. Coyne:

Q. Getting back to my question, if it should develop in this hearing that the Granite City Transfer Company has been performing the transportation of granite by motor truck with drivers who are familiar and trained in the [fol. 95] handling of granite for some ten to eleven years and that that company is authorized and is willing at your call to transport your granite, either truck load or split shipment, from Berry, Vermont, to your place of business in St. Paul in five to six days' time limit, would that service satisfy your demands?

A. I believe it would.

Q. Are you willing to use that service at the present time?

A. I am willing to use any such service that would expedite the shipments that I have referred to that are now late.

Mr. Coyne: That is all.

Cross examination.

By Mr. Cronon:

Q. Mr. Osborne, may I see that bill of lading to which you referred?

A. Yes, sir.

Q. That bill doesn't show the date that the shipment actually left Berry, does it? That is the date that the consignor made out the bill of lading, isn't it?

A. I think so.

Well, now, you spoke about the winter season being quiet. Do you ever put in a stock of Berry granite during the winter?

A. Yes, sir, we always have a large stock of Berry granite.

Q. Do you propose to transport all of your granite by truck if this application is granted?

A. Certainly not.

Mr. Cronon: That is all I have.

[fol. 96] Exam. Roberts: Redirect examination.

Redirect Examination.

By Mr. Morken:

Q. Following up on Mr. Coyne's cross-examination with regard to Granite City Transfer, prior to today have you had any business dealings with Granite City Transfer?

Mr. Coyne: I object to that as immaterial. The sole question is whether or not there is a need for applicant's service.

Exam. Roberts: Objection overruled.

The Witness may answer.

A. I think we have. I know that most of our granite from the St. Cloud area comes by a different carrier, Raymond Brothers, but I do think that through the years I have seen that truck in our yard.

Q. Prior to today have you ever been solicited or contacted by Granite City Transfer with regard to your business?

A. Never. I did not know until today that there was any motor service available from Vermont to St. Paul, although in our meetings we talked about it, and I wrote to the shippers and asked them if there isn't some way to get the stuff here more quickly.

Q. Whom did you write to?

A. The shippers.

Q. In Vermont?

A. In Vermont.

Q. If you know, assuming that the Granite City Transfer [fol. 97] will have this service that Mr. Coune outlined, does that mean that you will not need or will not use the service of the Schaffer Company as proposed?

Mr. Coyne: I object to that question as to whether or not the services of an authorized carrier performing these services would be adequate, not whether he would want somebody else in addition to them.

Exam. Roberts: Objection overruled.

What is your answer?

A. No.

Exam. Roberts: Do you control the routing of your shipments?

The Witness: Yes, I think so. We are not always arbitrary about it. We frequently ask the shipper to send it the fastest, most convenient way. Sometimes we do specify a road at this end, but we never specify a road at the other end. Freight solicitors call on me, and I may specify the Milwaukee.

Exam. Roberts: Would you specify a motor carrier service?

The Witness: Yes, I think so.

Mr. Morken: I have nothing further.

Recross examination.

By Mr. Coyne:

Q. So far you have not used a motor carrier from Berry, Vermont, to your place of business?

A. That is correct.

Q. One hundred per cent rail?

A. Yes, sir.

[fol. 98] Q. You came to this hearing to support one motor carrier so that you would have one motor carrier service available?

A. I believe so.

Q. Then, if you have learned now that there is available to you a motor carrier service offering the exact same service as proposed by this applicant, the purpose for which you came to this hearing will be fulfilled?

A. I would like to have ten services, if possible.

Q. Not because of a need, but because of a competitive point of view?

A. Not entirely, but feeling that one probably wouldn't be able to give us the service that we would have if two or more were available.

Q. How frequently would you use the services of one carrier?

A. It is very difficult to answer, because we have had everything come by rail, and it is only now that I have discovered that there is even a possibility of having it come by truck. I would guess six or eight times a year, maybe more frequent. It would depend on the volume of business and the circumstances.

Q. Will you tell Mr. Roberts to the best of your approximation how frequently you would want it or how much you would want, whether it is split load or not? In other words, tell him what your requirements are as you see them now and are going to be for the future.

Exam. Roberts: He answered as to the frequency of service.

[fol. 99] A. I wouldn't be able to give you an answer to tonnage at all, because we frequently have one or two large things, a mausoleum or a large monument.

Q. In one particular year that would be more tonnage than several shipments for three or four years?

A. My best opinion is that we would use that service six or eight times a year.

Exam. Roberts: A complete truckload each time?

The Witness: No, sometimes a complete truck and sometimes a case of getting one particular monument or one

particular unusual marker or perhaps two or three monuments.

By Mr. Coyne:

Q. Now, each time that you would want to use that truck you would be in a position to call the carrier to tell them that your shipment is ready, would you not?

A. No, the other end takes care of calling them that the shipment is ready. We don't know when the shipment is ready.

Q. Are you willing to inform the other end or advise the other end whoever it is to ship by, say, Granite City Transfer?

A. I would much prefer to advise the other end to ship by the quickest motor transport in those cases where I thought it advisable to use motor transport rather than specifying a particular motor transport.

Q. In other words, you are not concerned with who the carrier is, but you are concerned with the service they render to you?

A. That is absolutely correct.

[fol. 100] Q. Now, your services that you received from Mr. Dingman's Granite City Transfer in the past have been satisfactory to the best of your recollection, have they not?

A. Now my previous answer I indicated that I am not certain that we have used that service. He may be able to tell you better than I. I do know that a fairly large percentage of our shipments come either by Raymond Brothers or by our own truck.

Q. Now, on the shipments from Berry to your place of business, that would occur maybe six to eight times a year, and would they be spread apart?

A. In time?

Q. Yes.

Q. Yes, sir.

Q. Approximately a month apart, two weeks apart?

A. There would be no regularity. We might want four shipments in the month of April and we might not want one from November to April.

Q. But each time that you wanted a truck movement you would be in a position to either notify the carrier yourself, or do the shippers out east notify the carrier for you?

A. I presume we could go to that trouble, yes. We don't always do that, even with the rail shipments.

Mr. Coyne: That is all.

Exam. Roberts: Mr. Cronon?

[fol. 101] Mr. Cronon: No further questions.

Mr. Morken: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Mr. Morken: I will call Mr. Stengel.

JAMES STENGEL was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Will you state your name, please?

A. James Stengel.

Q. S-t-e-n-g-e-l?

A. That is right.

Q. Where do you live?

A. In Milbank, South Dakota.

Q. With what company are you connected?

A. Dakota Granite Company.

Q. What is your position with the company?

A. Secretary-Treasurer.

Q. You are an officer of the corporation?

A. That is right.

Q. Are you a part owner of the company?

A. That is right.

Q. Do your duties as secretary and treasurer cover the transportation matters and problems and handling of the Dakota granite?

A. Yes, they do.

[fol. 102] Q. You are familiar with this application in the proposed service of Mr. Schaffer?

A. I am.

Q. Will you describe what the Dakota Granite Company is and whether you are a manufacturer or distributor and just what your business is?

A. Well, we quarry and fabricate and letter according to retail dealer's specifications, and we ship strictly wholesale to retail outlets.

Q. Milbank is in Grant County, South Dakota?

A. That is right.

Q. Will you describe what is available there as the raw material that you manufacture and ship?

A. Well, Grant County has a granite ledge of a reddish-brown nature that is quarried and manufactured into mausoleums and monuments and building work since 1908. It is peculiar in the fact that it is an out-cropping of the granite ledge. It is an out-cropping, well, it is a red rock, that is what it is.

Q. Are there certain trade names or descriptions that go with this particular type of granite that you handle?

A. It is called Dakota Mahogney and Royal Purle, and there are quite a few variations in that color, American Rose, American Boquet, there are quite a few trade names they are all from that area and pertain to that same granite. It is a reddish-brown granite. In some cases it is quite red and in some cases almost blue.

[fol. 103] Q. Is there a supply of similar granite any place in the United States.

A. Well, there is no supply of granite that you could call identical in any respect. Anyone can tell the difference by looking at two pieces from a different area. There are other red-blue and brown grain granites, but they are different textures, and they look quite different.

Q. Does it have the area that the previous witness testified about, very similar granite?

A. No, they don't.

Q. Does the Dakota Company own quarries as well as manufacture?

A. Yes, we do. We have two quarries.

Q. Are there other producers, such as your company, in Grant County?

A. Yes, there are. There are two, Robert Hunter Granite Company and Rush Brothers in Ortonville.

Q. That is Ortonville, Minnesota, and it is just over the Minnesota-South Dakota border from Grant County?

A. That is right, they have an address also in Bigston, South Dakota, which is in Grant County.

Q. You gave your address as Milbank. Is your establishment located within the city limits of Milbank?

A. No, it is seven miles out, six miles east and one mile south of Milbank.

[fol. 104] Q. Are you on a rail siding or rail trackage?

A. No, we aren't. We are about six and a half miles from the nearest rail siding.

Q. At the present time how are you handling your outbound shipments from Grant Count?

A. Well, we are shipping by truck, by full carload, by common carrier truck, and by less than carload shipments.

Q. Less than carload on the railroad?

A. On the railroad, that is right.

Q. What railroad do you use and what truck service do you use?

A. We are using the Schaffer Trucking Company and the Milwaukee Road since it is the only main line through our town. We use the Milwaukee on all carload shipments and L.C.L. shipments. The dealer himself routes the car or it isn't routed at all. It is up to the discretion of the railroad.

Q. Before we leave this background on your business, do you ship your type of granite into Vermont?

A. Very little, but we do ship into Vermont.

Q. And by the same token, the different Vermont Granite is shipped into Minnesota and into South Dakota?

A. That is right, right into Milbank.

Q. The type of granite that you produce and ship, what is its purpose, its eventual use?

A. I would say ninety percent of it is monuments, memorial work, and the other ten percent would constitute [fol. 105] buildings and mausoleums and structures that are not memorial work.

Q. Building fronts and building finishing?

A. That is right.

Q. You said you are using Mr. Schaffer at the present time?

A. Yes.

Q. About how frequently?

A. Between two and three trucks a week, sometimes as many as four, and there has been a week once in a while when we don't ship at all. We have an annual vacation, and then there are weeks other than the annual vacation where we don't happen to have any truckload ready during that week. I would say we would average two and a half truckloads a week, possibly three.

Q. Do you operate any trucks of your own?

A. We have one truck of our own.

Q. I gather that this Hunter concern is a competitor in the same business in the same area?

A. That is right.

Q. Do you know if they operate trucks of their own?

Mr. Coyne: That is objected to as being immaterial. If they have a man from Hunter's, they should have him on there.

Exam. Roberts: You may answer the question. I don't want any interrogation on the Hunter case.

A. They have. To my knowledge at the present time they are operating three trucks over the road, and they propose to put on one more unit.

[fol. 106] Q. They do not go for common carriers, they are private carriers?

A. That is right.

Q. And you only one truck in private carrier?

A. That is right.

Q. What have you to say with regard to Mr. Schaffer's existing service to you, how has it been, the speed, and what-not?

A. Well, as Mr. Schaffer testified, we have about a five-day delivery into Ohio and western New York state and about six days into eastern New York state. We usually have a truck there the day we call for it. He has waited three or four days for us, and we have also waited three or four days, but the service has been very good.

Q. As a general rule does he have a truck available for you when you call for it?

A. Yes, he does.

Q. What has been your record with using Mr. Schaffer on claims?

A. We have had two that I can remember. I think we have only had two claims.

Q. Over how many years?

A. Since the beginning of '50.

Q. Were those taken care of satisfactorily?

A. Yes, they were.

Q. Now, the applicant is requesting an extension of his authority from Grant County to seven states, North Dakota, Wyoming, Texas, Arkansas, Louisiana, West Virginia——

[fol. 107] Exam. Roberts: That is eleven states.

Mr. Morken: Ten and the District of Columbia, and Arkansas, Oklahoma, West Virginia, Maryland, District of Columbia, Massachusetts, and Vermont.

By Mr. Morken:

Q. Now, do you in your business have any need for this proposed service to that area?

A. Yes, we do.

Q. Will you tell us what the need is, please?

A. Well, at the present time we are starting a new salesman in Texas, and it is almost impossible to start a new salesman in any area and expect him to develop a carload shipment into that area, as L.C.L. rail is rather high, as far as the dealer is concerned, since he looks at the price he gets the shipments from the other districts, and he notices the difference in the freight. We would like to be in a position to organize a truck shipment into that area since we would only have to have about twenty-four thousand pounds to ship by truck into Texas whereas at the present time it would take fifty thousand pounds, and it is almost impossible to organize that large a group that will buy our merchandise without first seeing our merchandising and so forth. As far as New England is concerned, we have shipped previously into New England, and quite often carload to Chicago and L. C. L. rail from Chicago into the New England states, and I wouldn't be able to give you any detailed information on how long that takes, but quite fre-

[fol. 108] quently weeks after we have shipped merchan-

dise we receive a letter from one of the customers wanting to know where his merchandise is.

Q. Does that happen quite frequently?

A. I could produce some letters from our file. It hasn't happened recently and I think that is one of the very good reasons our services have been much poorer to Connecticut than our competitors' services have been. I have with me a list of customers that would like to have service into Connecticut and Massachusetts.

Q. Can you name off the towns where these people reside?

Mr. Cronon: I think I will have to object to that.

Mr. Coyne: I would like to ask the witness who controls the routing on these movements.

The Witness: Well, we ship them into Chicago, and from Chicago J. S. Long takes care of them.

Exam. Roberts: Who is J. S. Long?

The Witness: He is a granite distributor, 2610 Southwestern Avenue.

Exam. Roberts: If you would use this motor carrier service to the New England states could you control the routing?

The Witness: Well, to a certain extent there wouldn't have to be any routing if there was only two or three stops on the way, the load would be organized so that we would know what stops were first.

Exam. Roberts: Would you select the carrier?

[fol. 109] The Witness: Yes, we would.

Mr. Coyne: Who pays the freight on them?

The Witness: The customer.

Mr. Coyne: You do not pay it in any instances?

The Witness: No.

By Mr. Morken:

Q. In your present operation, if a customer requests that you ship it either rail or truck, do you respect that customer's request?

A. Yes.

Q. As a practical matter can you give us any percentage on what the customers request, do they request rail or truck or do they leave that part of it open?

A. The majority of our customers are requesting truck shipments on less than truckload lots. When the order is very small, under five hundred pounds, quite commonly they request L.C.L. shipment, or if they are in an area that is served by one of the dry freight truck haulers they request whichever carrier may serve them the best. For instance, Nebraska and Iowa usually request Wilson delivery on orders less than five hundred pounds. It is usually replacement pieces, and they want that in a hurry, and they will take it any way they can get it.

Exam. Roberts: Let's confine your need for service to these proposed states.

By Mr. Morken:

Q. You mentioned you had a salesman now working in Texas. Do you have salesmen working in these other states? [fol. 110] A. Yes, we do, not all of those states, but the majority of them. We have salesmen in the New England state, Texas, Arkansas, North Dakota, Colorado, and one in West Virginia.

Q. Do you have orders on file now with your company for shipments that will be shipped to these states?

A. Yes, we do.

Q. Now, can you name us some of those points?

A. North Haven, Connecticut, Greenfield, Massachusetts, New Brighton, Connecticut, Bristol, Connecticut, Wooster, Massachusetts, Waterbury, Connecticut, Dallas, Texas, Lubbock, Texas, Jasper, Texas, Paris, Texas, and Waco, Texas.

Q. Those are the points where you now have orders on file?

A. We now have orders on file and the customers would like truck delivery.

Q. Is there any unusual project in North Dakota in which you are interested?

A. Well, there is a project, the Peace Garden, which is being built in conjunction with Canada. They are using a large amount of granite for terraces and steps, and we are supplying them with that granite.

Q. Do you have the contract for that?

A. We have the contract, and they would like truck delivery.

Q. Do you kow about where that is in North Dakota?

A. Is is on the Canadian line and about in the middle of the state.

[fol. 111] Q. In your business do you sell to one distributor in the state or do you sell to anyone in the state who is in the monument or building business?

A. We sell quite a number in each state. We usually limit our customers to one in each town. That is as far as we limit them.

Q. Can you name me a state and tell me how many dealers there would be in it, as an example?

A. Are you speaking of one of these proposed states?

Q. If you can give me one of those.

Exam. Roberts: Let's confine our questions solely to the states involved in this proceeding.

By Mr. Morken:

Q. Do you know how many dealers you have in one of the proposed states?

A. Well, Connecticut, we are now selling to about thirty-five dealers in Connecticut.

Q. Are there more than thirty-five dealers in Connecticut?

A. Yes, I would estimate there would be about a hundred, and that is a rough estimate.

Q. Are they all potential customers of yours?

A. Yes, they are.

Q. Now, if this proposed service is granted, do you know about how frequently you would use it?

A. Possibly about seven or eight times a year in that particular area.

Exam. Roberts: New England area?

[fol. 112] The Witness: Yes.

Into the Texas area it is impossible to say right now just how often we would use the service. For the next year we wouldn't use it very often, but it would gradually pick up.

By Mr. Morken:

Q. I notice that in May of 1951 Mr. Schaffer hauled a load from Grant County and delivered to nine different destinations in Iowa, Kansas, and Oklahoma. Now, for Oklahoma would it be possible to put the Iowa and Kansas loads on the truck and put Texas shipments on a truck that is going to Oklahoma?

A. That would be very possible.

Q. Have you ever used Mr. Dingman's service, the Granite City Transfer Company, or are you familiar with that carrier?

A. I am. I haven't used it in the last two years, and before that time the traffic department was handled by Mr. Jergins, and I believe he used it once or twice. I am not in a position to say just exactly how many times the service was used. I know, however, it has been used.

Q. But not in the past two years to your knowledge?

A. No.

Q. Do you know if Mr. Dingman has any equipment or office or setup in the vicinity of Grant County, South Dakota?

A. I don't know of any.

Q. Have you ever been solicited by anyone from that company?

A. Mr. Dingman was over last summer and left his tariff, [fol. 113] and that was the only time he has been over.

Q. He didn't ask you for any business, as I understand it?

A. Well, he left his tariff. I imagine that is a request for business.

Exam. Roberts: Let's proceed, gentlemen.

By Mr. Morken:

Q. Would the fact that a carrier doesn't have any equipment in your area and you have to call long distance be a handicap in your business?

A. Yes, I think it would be.

Q. Why is that?

A. Well, if we called him in the morning and expected him to load a load that day, the best he would do would be

over in three days, if he had the truck running outside his door, and quite often we find ourselves with two or three trucks in the yard waiting to load. A customer comes in with his own truck, and it is much more convenient to be able to call up and ask for a truck in a half an hour. We can work it in, and continually load that way, without having to schedule our customers according to our public carrier.

Exam. Roberts: Any need that you wold have for service would be strictly one-way movement, would it not?

The Witness: That is right.

By Mr. Morken:

Q. Now, has Mr. Dingman ever promised you any service or tried to arrange any service into, say, Texas or Arkansas or Oklahoma or Connecticut?

[fol. 114] A. No, he hasn't.

Q. Or any of the other states that are involved here?

A. No, he hasn't. He left his tariff. I studied it for a little while. Texas may be included in his tariff, I couldn't tell you.

Q. Does Mr. Dingman hold out a split delivery service such as Mr. Schaffer offers you?

A. Well, Mr. Schaffer's split delivery service——

Exam. Roberts: Let's be responsive to the question.

By Mr. Morken:

Q. Does he hold out a split delivery service?

A. He has a spiit delivery service.

Q. Is it feasible to use Mr. Dingman's split delivery service?

A. No, in most cases I would say not.

Q. Why is that?

A. His rates on split delivery, his full truckload rate and his split delivery rate are quite different, and his split delivery is a great deal higher than his full truckload rate.

Q. Would you call his tariff rules in effect a bar against that type of traffic?

Mr. Cronon: I think that question is improper.

Mr. Morken: I am not talking about rates.

Exam. Roberts: Let's not argue. Let's proceed. It is a question of rates rather than a question of service.

Mr. Morken: He answered the question.

The Witness: Yes, I did.

[fol. 115] Exam. Roberts: Any further questions, Mr. Morken?

Mr. Morken: No, you may cross-examine.

Cross examination.

By Mr. Coyne:

Q. What is your predecessor's name?

A. My father, Mr. E. G. Stengel, who was secretary and treasurer.

Q. Who was traffic manager?

A. Mr. Joe Jergins.

Q. How long have you been in with your company now?

A. Well, I have been around the company all my life. I have been in my present position two years.

Q. Now, you have been around that company all of you life. Isn't it a fact that your company used the services of Mr. Dingman, the Granite City Transfer, very, very regularly two and three years ago?

A. I am aware that we used Mr. Dingman two or three years ago. I can't say it was very regularly, because at that time we were shipping mostly carload.

Q. But you know that you were using them at such times as you were using motor carrier service?

A. That is right.

Q. And isn't it a fact that about that time Mr. Schaffer came along and secured some authority and solicited business from your company at lower rates than Mr. Dingman had been offering your company?

A. Well, I am not in a position to say that Mr. Schaffer's [fol. 116] rates were lower when he solicited our business in the first place. If I understand it correctly, I believe Mr. Dingman's rates have gone up since that time, and on full truckload rates I am not at all sure that Mr. Schaffer's rates were lower than Mr. Dingman's rates.

Q. Well, at the present time Mr. Schaffer's rates are considerably lower than Mr. Dingman's rates?

A. They are.

Q. And you have been using Mr. Schaffer exclusively?

A. Yes, we have.

Q. You testified that Mr. Dingman came over even after the business had been cut and left his tariff with you and discussed the possibility of getting business from your company?

A. Yes.

Q. So you are aware by reviewing his tariff and his rates and the discussion with him that he is authorized to transport this granite from Grant County, South Dakota, to certain New England and eastern states?

A. I am.

Q. And to refresh your memory, those states that he is authorized to serve in the New England states for which the applicant is seeking authority here today are Vermont, Massachusetts, Connecticut, Maryland, and the District of Columbia, isn't that correct?

A. Yes.

[fol. 117] Q. Now, Mr. Dingman is located in St. Cloud, Minnesota, isn't he?

A. That is right.

Q. And as you stated if he had his trucks running he would be over there in three hours to pick up your shipments?

A. That is right.

Q. Now, these shipments that you send out are orders in many cases that you fabricate and prepare and work on for quite a length of time?

A. That is right.

You know more than three hours ahead of time when those shipments are going out, don't you?

A. In many cases, but not in all cases.

Q. And Mr. Dingman only charge you for services from your place of business to the destination?

A. That is correct.

Q. So Mr. Dingman is able to get equipment over to you in ample time to move your shipments out of Grant County to any of these points?

Mr. Morken: I object to the form of the question as being a misstatement and assuming facts not in evidence.

Exam. Roberts: I think Mr. Coyne should rephrase the question.

By Mr. Coyne:

Q. So according to your testimony that you in most instances had more than three hours to secure transportation [fol. 118] facilities and that Mr. Dingman can have trucks over there in a minimum of three hours, then there is no delay?

Mr. Morken: Same objection.

Exam. Roberts: We don't know that Mr. Dingman can have it over there at that time. I think you should do less testifying.

Mr. Coyne: I will withdraw the entire question.

By Mr. Coyne:

Q. Your service that you had from Mr. Dingman, except for the rate differential, was a satisfactory service, wasn't it?

A. No. Quite often I wasn't told, as I wasn't there at the time.

Mr. Coyne: Just a minute.

Mr. Morken: You asked him, and it is going to hurt. Now, let him answer.

Exam. Roberts: Mr. Morken, please be quiet.

A. I was told that quite often we had to wait a week and longer than a week, and I am afraid that would be all I would answer.

Mr. Coyne: I ask that be stricken on the grounds of hearsay.

Exam. Roberts: The record will stand as it is.

By Mr. Coyne:

Q. To your own knowledge you have not used Mr. Dingman's services since you have been traffic manager, have you?

A. That is correct.

Q. So you, of your own knowledge, have no complaint whatsoever about his service?

A. No, I don't.

[fol. 119] Q. Now, you know that his service exists from South Dakota to the eastern states that I named before, don't you?

A. Yes, I do.

Q. You have not utilized his service whatsoever?

A. No, we haven't.

Q. If this application is granted here you will use the applicant to those eastern states, will you not?

A. That is correct.

Q. And I presume you are here today to testify that if the applicant's services are granted that that motor carrier service will satisfy your requirements?

A. I would say we will use it. Whether we will be satisfied with it or not, I wouldn't be in a position to say.

Q. Do you know of any reason why you won't be satisfied?

A. No.

Q. To the best of your knowledge you will be?

A. I expect to be satisfied with it, yes.

Exam. Roberts: What has been your dissatisfaction with the existing service?

The Witness: I have no complaint against the existing service. I would rather not say that I would be satisfied with a service that doesn't yet exist. I haven't had a chance to judge it. That is about all I could say on that question.

By Mr. Coyne:

Q. Would a service that would transport either full truckload or split delivery full truckloads from your place of [fol. 120] business to points in the eastern states that I have named meet your present transportation requirements to those states?

A. I would have to qualify that statement. I would have to be able to consider the rates on that split shipment, because the majority or practically all of our shipments into that area, since it is so close to Berry, are small shipments, split shipments, and although the stops might only be ten miles apart, those rates will have to be fairly com-

petitive, because they will be competing with granite from the Berry area.

Q. In other words, as I construe your answer, such a service would meet your requirements with the qualification that the rates might seem too high in split deliveries, is that your answer?

I would have to qualify that, too. If we could expect service when we called for a truck and if the rates were competitive with rail rates and other types of carrier rates or carload, pool carload to Chicago rates, I would say it may meet our needs.

Q. Now, you have competitors located in St.Cloud, Minnesota, do you not?

A. We do.

Q. Those competitors in St. Cloud sell to essentially the same trade and market in the eastern states that I name that Mr. Dingman serves?

A. That is true.

Q. Are you aware of the fact that those competitors all [fol. 121] presently use Mr. Dingman's Granite City Transfer services on full load and split delivery shipments to th same destination territory?

A. I am aware that they do, but they also are in a far different position than we are, being only one company in St. Cloud, the particular dealer can save so many pounds of each of these various companies he would like to have yo deliver, and by that way that split rate wouldn't be nearly as high, whereas we can only ship to that one dealer. They can organize a pool in St. Cloud, and we can't.

Exam. Roberts: I think the rate situation is cleared up here now.

Proceed.

Mr. Coyne: I believe that is all.

Exam. Roberts: Mr. Cronon?

Cross examination.

By Mr. Cronon:

Q. Mr. Stengel, referring to the states which Mr. Schaffer wants to serve, have you had any rail carload shipments to any of those states out of Milbank since January 1, 1952?

A. No, we haven't.

Q. Have you had any rail less than carload shipments since January 1, 1952?

A. We have had carload to Chicago and rail out from Chicago.

Q. You mean truck to Chicago?

A. Truck to Chicago and rail from Chicago.

[fol. 122] Q. Was it a full truckload from Milbank to Chicago?

A. Yes, it was.

Q. Referring to those orders which you have on file, are they firm orders on which money has been paid down?

A. No, but I would estimate that ninety-nine percent of them would be accepted and delivered. In our business when an order is placed, since it is a different size, since it is the specifications of the dealer himself, very, very seldom do they cancel the order.

Q. Are any of those shipments now ready for delivery?

A. I would say, yes, about half of them are.

Q. Now, why don't you tender them to some form of transportation and get them delivered?

A. We intend to. We have committed ourselves. They will have to go by truck, and we will have to have less than a truck and deliver them.

Q. Why will they have to go by truck?

A. They were requested truck.

Q. Why did the customers request truck delivery?

A. Well, in one case our salesman in New England didn't think he could organize a carload for that area, but he thought he could get about twenty-five thousand pounds, which he did, and so we will have to ship that by truck, since we don't have our minimum of fifty thousand. One New England customer has a carload on order now, and that will be delivered carload, of course.

[fol. 123] Q. Tell me, on these small shipments to Vermont, why have you held up delivery and not called upon Dingman to deliver those shipments?

A. Well, we could secure just as good service and faster delivery in all probability, that is an assumption of course, and the rate would be about the same if we shipped the carload to Chicago and L.C.L. from Chicago to the destina-

tion, and except for the truckload that we now have on orders, that is the way we have been handling those shipments.

Q. Are these customers of yours pretty much interested in the transportation charges?

A. Well, as far as the east coast the transportation charge means quite a bit in the price of a monument.

Q. Do you think that is one of the reasons why some of your people prefer shipping by truck?

A. I think the biggest reason is that they can get split shipments and small split shipments at a reasonable rate and faster, usually, and they are assured that they will get there without any damage.

Q. Have you had damage in using some of the truck lines?

A. We have had considerable damage in using dry freight carriers. I would say very roughly we have had about one out of every four pieces by using dry freight carriers.

Exam. Roberts: Dry freight, you mean general com-
[fol. 124] modity carriers?

The Witness: That is right.

By Mr. Cronon:

Q. Would you explain this operation out of Chiago, is that where they assemble small shipments for movement to the east?

A. No. We assemble the car and ship the car to J. S. Long, and he distributes the car from there on a L. C. L. rail.

Q. What is he, a sort of a broker?

A. That is about what it is, a distributing agent. His job is simply to transfer from our car to L. C. L.

Q. I understood you to say they were carload shipments out of Chicago.

A. Carload to Chicago, and L. C. L. from Chicago.

Q. When was your last carload to Chicago?

A. About two weeks ago.

Q. Did you hear Mr. Schaffer testify?

A. I heard, I think, the majority of this testimony.

Q. What I have in mind particularly is his statement that the granite which you quarry around Milbank is consider-

ably different than the granite which is quarried at Berry, Vermont. Did you hear him say that?

A. I heard him say it was quite similar at one time in his testimony except for color.

Q. You said that you want a new transportation service so that you can compete with carriers in Vermont?

[fol. 125] A. The quarries in Vermont, they don't manufacture only Berry granite, they import granite from Finland and Sweden, and those granites are colored and they are quite competitive with our line. At the present time there is a very small percentage of that type of working being done, but it is picking up, and it is competitive with our line.

Q. The longer you get away from the base of your operations the harder it is compete?

A. That is right.

Q. And the reason is because the transportation costs have gone up, is that correct?

A. That is correct.

Mr. Cronon: That is all.

Redirect examination.

By Mr. Morken:

Q. Mr. Stengel, the gentlemen seemed to infer that your interest in this proceeding is in rates, as far as your supporting Mr. Schaffer in your using him at the present time. Is it his rates that is primarily the main or the big point or what is your reason for using him and why are you here?

A. From our standpoint it is much more economical for us to load a truck under our own crane at our fabricating plant than to have to haul it seven miles into town.

Q. And by using Mr. Schaffer, he backs his trucks into your yard?

A. He backs a truck into our yard, and he loads it, and he checks it out, and from the time it is checked out we are [fol. 126] reasonably sure that it will get there in good order, his service is fast, and he has very little breakage, and the dealers in many cases call for his delivery, very many cases.

Q. I assume his picking it up at your plant rather than your driving it into Milbank saves you money?

A. Quite a bit of money.

Q. And you are interested in saving that money?

A. Absolutely. There is another savings.

Q. Are there any other savings?

A. Well, on truck shipment you don't have to spend as much time or money crating the monuments, because they are only handled once, they put them on the truck, and the only other time they are handled is when they are slid off on the dealers show yard so they save considerable office work, because we don't have to file as many claims.

Q. Do you consider those savings rate matters or service matters or both?

Mr. Cronon: That is objected to as calling for a conclusion of the witness.

Exam. Roberts: I think the witness may answer, but I think you should propound one question at a time of the witness.

Mr. Morken: I will remember that in the future.

A. They lower our cost of operation, and they allow us to give better delivery at a lower price per monument, and you would almost have to call them both.

[fol. 127] By Mr. Morken:

Q. And that is the reason why you are here today?

A. That is right.

Q. Do you recall when Mr. Coyne was talking to you and you said that you had never used, I believe; do you recall the question you said you had never used?

A. No, I don't.

Mr. Morken: That is all.

Recross examination.

By Mr. Coyne:

Q. Mr. Stengel, you just pointed out certain economic savings to the applicant's counsel by use of Mr. Schaffer's truck. Those same economic savings are available to you,

as far as your company is concerned, if you were to use Mr. Dingman who has comparable equipment, isn't that correct?

A. Well, I imagine I make at least two telephone calls to Mr. Schaffer a day, and I would have to do the same thing to Mr. Dingman in St. Cloud, and that in itself would run high.

Q. In other words, then, is it your testimony that the only difference between Schaffer's and Dingman's expense to your company from an economic point of view would be the telephone calls?

A. I wouldn't be able to say that definitely, because I don't know how many claims we would have to put into Dingman's transportation service, and I don't know how many man hours we would waste waiting to load a truck, and I don't know how we would have to crate our merchandise, if [fol. 128] if we would have to crate it better or possibly wouldn't have to crate it as well, to assure safe delivery, but it is one of the incidentals that would be definitely different.

Q. Well, now, tell me this, because we want to see whether this is a comparable service, how much crating do you have to do for Mr. Schaffer?

Mr. Morken: Mr. Examiner, I am going to object to this question. The witness has testified that he hasn't used Mr. Dingman for two years and his only contact has been one time, and he has just nothing to compare on a comparable service, and I think the question is improper.

Exam. Roberts: I think Mr. Coyne can show at the proper time what the service of Mr. Dingman is and whether or not Mr. Dingman is——

Mr. Coyne: First I want to ask this witness what he gets from Schaffer.

Exam. Roberts: I have no objection to your asking him on the matter of loading.

By Mr. Coyne:

Q. How much crating do you do for Mr. Schaffer under these operations?

A. That question, I think, is practically impossible to answer. You would have to specify what particular piece and what size you want crated.

Q. I will ask you this then; Mr. Schaffer uses flat bed [fol. 129] equipment, does he not?

A. Yes.

Q. And you do crate your pieces of granite to a certain extent, isn't that correct?

A. Except for building fronts, and then he holds them on the truck himself and puts on his own crating.

Exam. Roberts: I think, Mr. Coyne, that the witness testified that there were certain operating economies by use of Mr. Schaffer. I think you can develop at the proper time whether or not your client operates over those same economies.

Mr. Coyne: When this witness is gone, we don't know what services Mr. Schaffer offers him.

By Mr. Coyne:

Q. If Mr. Dingman offered you the same identical services and facilities as Mr. Schaffer, would you use his services?

Mr. Morken: I object to that as assuming something that is an impossibility, as no two men can do exactly the same thing.

Exam Roberts: Let's not be too technical.

I will allow the witness to answer the question.

A. Not under the present tariff.

By Mr. Coyne:

Q. In other words, the whole thing with Dingman and Granite City Transfer boils down to a rate question?

A. No, I wouldn't say that; on a full truckload rate we could use Dingman's services very well.

Q. Are you willing to use Dingman on full truckloads to [fol. 130] those eastern states?

A. We would rather use one supplier.

Q. Are you willing to negotiate to discuss rates with Mr. Dingman on split delivery shipments?

A. We will.

Q. And if Mr. Dingman, subject, of course to O. P. S. and I. C. C. approval, is able to negotiate competitive rates with you, then his services should satisfy your requirements to these eastern states entirely, should they not?

Mr. Morken: I am going to object to this type of questioning, as it is arguing and trying to confuse the witness.

Exam. Roberts: I think we have had enough on the rate business. I think the matter of comparison should remain as to service. The rate is very clear as to what the rate situation is.

Mr. Coyne: I think the record is clear on everything. I will ask no further questions.

Recross examination.

By Mr. Cronon:

Q. Mr. Stengel, when you ship by rail do you haul the shipments down to the Milwaukee Railroad, down from Milbank in your own trucks?

A. Yes, we do. No, we don't. Those trucks are owned by Annette Trucking Company. He is a private carrier. He hauls for us down to the rail siding. He hauls also L. C. L. shipments into town and dry freight carrier into town.

[fol. 131] Q. Does he load the shipments onto the flat cars?

A. He uses our crane to load the shipments, and we have control of his trucks, that is to say, they are there all the time, and he is there all the time, but he owns the trucks.

Q. Have you had any considerable amount of damage on that which he handles?

A. Very little.

Mr. Cronon: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: Gentlemen, it is 12:15, shall we adjourn for lunch?

Off the record.

(Discussion off the record.)

Exam. Roberts: On the record.

We will take a five-minute recess, and then call Mr. Schaffer for cross-examination.

Exam. Roberts: We will come to order.

(Short recess.)

AUBREY WILLARD SCHAFFER resumed his testimony as follows:

Cross examination.

By Mr. Coyne:

Q. Mr. Schaffer, do you presently haul silican carbide from Niagara Falls?

A. Yes, I do.

[fol. 132] Q. Referring to Exhibit 6, Mr. Schaffer, how manh of these tractors and trailers are exclusively assigned to granite hauling?

A. Six of them.

Q The others are used in your dry freight operation and your grain and sale operation also?

A. Dry freight operation only.

Q. And the six that you use are which ones, the first six?

A. The first six.

Q. And they are all Ford power engines, is that correct?

A. Right.

Q. Now, referring to your Exhibit 7, page 1, which is your balance sheet, you have a total value of your equipment at twenty-two thousand seven hundred twenty-five dollars and twelve cents.

A. Just a moment, please. What was that item again, please, on what page?

Q. Page 1, your Assets show Trucking Equipment and Cars and Less Depreciation Reserve of twenty-two thousand seven hundred twenty-five dollars and twelve cents. Is that the correct figure for all of your trucking equipment and cars?

A. Yes.

Q. You say you have fourteen all told, is that correct?

A. Yes.

Q. And eight of them, I gather, including your car, are used on your dry freight and your salt and other operations?

[fol. 133] A. I beg your pardon, I didn't get that question, please.

Q. You have fourteen complete units, including your car, is that correct?

A. Yes, I believe that is all. I believe I testified fourteen or fifteen.

Q. And all but these first six are used on your dry freight operation and your salt and grain hauls, is that correct?

A. I don't follow you on that question. All but six of them, you say, are used on the balance of the operations, is that the question?

A. Yes.

Q. And are those eight that are used on other operations in good condition?

A. Yes.

Q. Well valued?

A. Well, there are some of the grain operation that was used equipment that was purchased, in fact, it was taken over from a friend of mine, and reconditioned for that work.

Q. The value of those eight plus your car certainly exceeds the value of the six that you have in the granite hauling, don't they?

A. I wouldn't say that, because our best equipment is used on the granite hauling.

Q. The best equipment. The average value of your com-[fol. 134]plete unit on your granite hauling is more than two thousand dollars, is it not?

A. What was that?

Q. Is the average value of a complete unit on your granite hauling more than two thousand dollars?

A. Well, the way it is set up, it depreciated down on a depreciation basis, and it would be depreciated down to that, because we depreciate our trucks down in five years.

Q. Then all of these forty-eight units are depreciated in three full years and going on their fourth year now, is that correct?

A. They are going on their fifth year

Q. Under those terms of depreciation you are going to be needing new equipment very shortly?

A. Not necessarily, because that equipment has been maintained, taken care of, by our mechanics, two full time men, and today it is in very good shape, first class mechanical condition, and within the last sixty days it has all been inspected and approved by the I. C. C. road checks safety appliances, brakes tested, and all the requirements that are

required by the I. C. C. have been approved on them. There just recently was five new motors installed and one completely overhauled, and at the present date it is in first class mechanical condition.

Q. Now, turning to pge 2 on the exhibit, as I understand it, that is an operating statement for the year 1951 covering all of your trucking operations, is that right?

[fol. 135] A. Yes.

Q. Did you have any legal expense during the year 1951?

A. Yes.

Q. What item is that under?

A. It isn't listed because this is taken from our income, federal income, tax returns, and our federal income tax is filed, and we are informed a year ago, we were called up before the Examiner of the Internal Revenue, and he said we could not deduct legal fees of any kind, and, therefore, it doesn't show that.

Q. Approximately how much were your legal fees pertaining to your trucking industry last year?

A. Very small.

Q. Would it be more than eight hundred dollars?

A. No.

Q. Then, are there any other items other than legal fees that you haven't included in your expenses?

A. No, legal fees was the only thing we exempted.

Q. Then, as a matter of fact, the profit on your trucking operation would be whatever the legal fees were under your eight hundred and forty-four dollar profit shown?

A. I suppose if it says that there, that is what it would be.

Q. Page 5 of this has reference to your granite operation in its entirety, has it not?

A. I believe so, yes.

[fol. 136] Q. And page 5——

Exam. Roberts: You mean page 4.

By Mr. Coyne:

Q. Pardon me, I am sorry, I mean page 4, which is your operating statement referring strictly to granite hauling shows a net loss of eight hundred and five dollars and fifty-two cents, is that correct?

A. That is correct. I might add to that——

Q. Just a minute. That granite trucking that resulted in this net loss of eight hundred and five dollars and fifty-two cents was composed partially of this split delivery haul, which the witness just preceding you now said was cheaper from you than other existing carriers, is that correct?

A. Possibly.

Q. Then, isn't it a fact that you have been transporting granite at rates which do not yield a fair profitable return for that transportation?

A. I would like to answer that question very briefly.

Q. Go ahead.

Q. A year ago we applied to a rate expert of the Public Utilities Commission in South Dakota for a straight ten percent increase of rates across the board on our tariff and were denied by the Commission at that time because of some reason pertaining to the O. P. A. They were denied, and we reapplied for them, and in turn were denied again. It has been approximately a year ago. Since that time we have participated in asking for a rate increase, but we have [fol. 137] been waiting the outcome of this hearing, depending upon the operations of what it would be, and then at that time if we were granted this authority, when they set up a new tariff, we would set it up all together.

Q. Mr. Schaffer, the Schaffer Transportation Company is a common carrier, is it not?

A. Right.

Q. Isn't it a fact that as a common carrier operates you would look to the I. C. C. itself for increases in rates on this type of rate haul?

A. We asked the I. C. C., and it was denied by the I. C. C. because of the fact that we merely used our fellow in South Dakota who published the rates originally for me, done the work for me, and we had the same man do it over, and it was denied by the Commission. We asked the Commission. He merely published those rates. He merely drawed up the necessary forms to go through to ask for this increase.

Q. Let's leave that, and I will ask you this: do I understand your testimony correctly that you want a rate increase and have wanted one, but haven't been able to get it?

A. We didn't at that time, and we haven't applied for six months.

Mr. Morken: That didn't answer the question.

By Mr. Coyne:

Q. Do I understand your testimony to be that you have wanted a rate increase, have applied for rate increases, but have not received them?

[fol. 138] A. A year ago we did, yes.

Exam. Roberts: That is enough on that situation. I don't want to hear any more on rates, Mr. Coyne.

Mr. Morken: I will make the offer that if Mr. Coyne is interested I know who prepared these applications for rate increases.

Mr. Coyne: I am not interested in that.

Exam. Roberts: This is not a rate hearing. We only talked about rates to see whether or not the shippers who desired were more interested in rates rather than service. I don't want to go into any——

Mr. Coyne: I would like to ask two questions, just following my thinking here now.

Exam. Roberts: I think you are taking advantage.

Mr. Morken: I think that you are out of order.

Mr. Coune: I would like to make this offer of proof, that what I propose to ask and what I was laying the foundation for was this——

Mr. Morken: Before they clutter the record, I think in making an offer of proof you have to know what the witness should testify and if he would testify in accordance with your offer now.

Exam. Roberts: Off the record.

(Discussion off the record.)

Exam. Roberts: On the record.

[fol. 139] By Mr. Coyne:

Q. Mr. Schaffer, would it be a correct statement of fact, then, to state in the record that it is your intention to increase your rates over what they now are?

A. Yes.

Q. If your rates are increased over what they now are, the shipper, particularly the last one who was here, will not enjoy as great a rate benefit as he has in the past and the differences between your services and Mr. Dingman's will be diminished in that respect, isn't that correct?

Mr. Morken: I object.

Exam. Roberts: Objection overruled.

The Witness: What was that?

Exam. Roberts: Let's go on.

(Question read.)

A. Well, I don't think they would be, we being local, I think.

Exam: Roberts Do you understand the question?

The Witness: Well, there is really two questions there.

Exam. Roberts: He asked you whether the differences in rates would be diminished.

Mr. Morken: He asked if the shipper would enjoy less of a difference. The shipper is not enjoying any difference at all as at the present time he isn't using Mr. Dingman.

Exam. Roberts: Let's let the witness answer. I think it can be answered either yes or no.

The Witness: I still don't understand yet thoroughly as to [fol. 140] what you are getting at there. I don't see in listening to his testimony whether there would be any difference as far as rates. I believe he testified that it didn't make—the rates was not too important a factor.

Exam. Roberts: I think the Commission can decide whether or not that is a question in this case.

Let's proceed, Mr. Coyne, in your cross-examination.

By Mr. Coyne:

Q. In the past your grain and salt operation and your dry freight and farm operations have been adding to support your granite operations, haven't they?

A. Not necessarily.

Q. They are your profitable operations, aren't they?

A. That is true, they are profitable. If you would let me

elaborate on that, and in our granite operation it shows here a eight hundred and five dollar and fifty-two cent loss. Now, as your client knows, the trucking business, you can put on six pieces of equipment a very large amount of money in tires. You can put a large amount of money into maintenance, and in our figure of our federal income tax the government has always accepted a cash return. We filed a cash return starting back when we first started in business, and we followed it through, and consequently, any repairs or tires that we put on those trucks are double expenses, and it is usually at the time of the year along in December that we maintain our trucks over the Christmas holidays, and before we overhaul our trucks, we retire them and [fol. 141] put on extras or get them in shape, because December is usually rather, in the granite business, a slow month, and we have put back into those trucks, as I testified here befor that they are mechanically in A-1 shape, a large amount of money into those trucks, mainly for the purpose, one purpose is, to eliminate the income tax, which is perfectly legal on a cash return basis. The government has accepted it. We have been checked on it, and they have approved the practice, and for that reason we did show a loss. If we let our equipment——

Exam. Roberts: Let's not go too far.

The Witness: We could have shown a seven or eight or nine thousand dollar profit vrry nicely, if they let our equipment depreciate. We lost one of our big shippers last summer to the favor of his own trucks, and he didn't stop because of rates.

Exam. Roberts: Now, I don't want you to go into a rate situation.

The Witness: I might add this——

Mr. Coyne: May it please the examiner, there is no question pending.

That is all.

Cross examination.

By Mr. Cronon:

Q. Mr. Schaffer, will you refer to your Exhibit 7?

A. Exhibit 7?

Q. Page 1.

[fol. 142] A. All right.

Q. That appears to be a balance sheet covering all of your various operations, is that right?

A. That is right.

Q. Do you have any balance sheet covering your granite hauling operation alone?

A. No.

Q. Why didn't you furnish such a balance sheet?

A. Well, because they were taken, as I said before, from our records that were filed with the Internal Revenue.

Q. Has your accountant ever prepared a separate balance sheet for your granite trucking operations?

A. I think on page 4 it shows the granite trucking business broken down separately.

Q. That is an income statement. I am asking about a balance sheet.

A. No, we don't.

Exam. Roberts: Do you keep separate books on all these operations?

The Witness: Yes.

By Mr. Cronon:

Q. Still referring to page 1 of Exhibit 7, where is the Rozum Motor Company located?

A. Rozum Motor Company?

Q. Yes.

A. Watertown, South Dakota.

[fol. 143] Q. Referring to your long-term items, are those real estate mortgages or chattel mortgages?

A. One is a real estate mortgage.

Q. Which one?

A. The bottom item.

Q. Thirty-six hundred dollars?

A. Right.

Q. And what is the three thousand dollar item on?

A. That is notes payable on equipment.

Q. About the sixty-eight seventy-five?

A. That is also notes payable on equipment.

Q. And then your note payable, total twelve hundred dollars, is that also on equipment?

A. That has been, but at that time that was notes payable on equipment.

Q. Page 2 of Exhibit 7, what does float and exchange mean under your expense item?

A. Float and exchange is check exchange.

Q. Explain the item "tolls and fines"?

A. Tolls and fines?

Q. Yes.

A. Tolls for when we cross toll bridges or cross states that special mileage tax is required.

Q. How about fines?

A. Fines are possibly violations, small violations, of some [fol. 144] item or another pertaining in the trucking business or possibly one particular item I remember was an item of my own personal card that is the company car. They run those in there together, the fines are very small.

Q. You mean a speeding fine?

A. It was particularly on my car, it was a speeding fine.

Q. That wasn't two thousand?

A. No, no, the biggest percent of that is tolls for crossings, and for illustration, the Pennsylvania Trunpike.

Q. Have any of your trucks ever been stopped and found to be overloaded?

A. No, not in—I think we had two violations of that in 51.

Q. Why did you say no?

A. I was referring to lately. I thought of this operation, so I included that.

Q. Page 4 of Exhibit 7, now, that is your operating statement covering granite trucks alone, is that right?

A. That is right.

Q. How much of your item of tolls and fines, which is shown as thirteen hundred twenty-four dollars and sixty-five cents, is fines?

A. I couldn't tell you that offhand. It is a small portion of it, I know.

Q. Are they overload fines?

A. On two instances it would be, I recall those.

[fol. 145] Q. Now, in your direct testimony you stated that if the application is granted it will make a more profit-

able operation for you because you will be getting a back haul of granite from the Vermont area, is that right?

A. Right.

Q. However, you won't be getting any back haul on truck deliveries in the State of Texas, will you?

A. Under the present operation we would, but under incorporation we would not.

Q. Do you now operate in the State of Texas?

A. No.

Q. You are not asking for any rights from Texas back to Milbank?

A. No.

Q. So that you won't have any back haul?

A. I can explain that the rates are higher in comparison going south than east.

Q. But you won't have any back haul from Texas?

A. No.

Q. And Arkansas and Oklahoma, the same thing?

A. That is right.

Q. How about West Virginia, Maryland, and District of Columbia?

A. No.

Q. What are you going to haul back from West Virginia?

A. Dead head to Berry, Vermont. We intend to dead head from there to Berry, Vermont, and pick up a load.

[fol. 146] Exam. Roberts: I think you should be more responsive to these questions.

By Mr. Cronon:

Q. Are you going to have a back haul directly from West Virginia to South Dakota?

A. No.

Q. The same thing is true of Maryland and the District of Columbia, is that right?

A. We will know we are not going to have a back haul.

Q. You spoke about having to discharge some of your drivers and you had difficulty in keeping good drivers. What do you mean by that?

A. I didn't testify that I had difficulty with keeping drivers.

Q. I got the impression that you said that your requirements of your drivers were so strict that you had difficulty keeping men on the pay roll, is that right?

A. No, I didn't testify that.

Q. Then, you have had no difficulty in keeping men on your pay roll?

A. I have had no difficulty, although I have disposed of drivers that wouldn't follow regulations.

Q. And what regulations didn't they follow?

A. Well, the main regulation was that they spent too long a time on lay-overs. That was a company regulation, our own.

Q. You mean that they would take more than the eight or ten hours off?

[fol. 147] A. No. There was lots of times when we leased to other motor carriers. If there was a load ready to go on Friday out of Chicago for Gateway Transportation or whoever we may be leasing to, possibly the driver would spend an extra day, and for that reason is the reason.

Q. You mean an extra day off the job?

A. That is right.

Q. How about these drivers violating the hours of service regulations?

A. We have had practically no trouble with them. We had to call a couple of guys to the point that they probably had put in twenty minutes overtime, and we watch that very, very close.

Q. When you say you had practically no trouble, how much trouble have you had with the drivers?

A. Well, there was only one instance where a driver had spent approximately twenty minutes extra time on loading, and he was to have completed his driving in bad weather conditions, and he got into this place and he wanted to continue unloading.

Q. Describe the type of trailers you use.

A. Well, the type of trailers we use are the flat-bed trailers with about twenty-two inch sides to prevent the granite from sliding off or shifting.

Q. Have you leased any of your equipment to other parties for the return haul from, say, New York or Pennsylvania?

A. Yes.

[fol. 148] Q. Do you intend, then, to so lease them in the future if this application is granted?

A. No, we don't intend to, because it has been very impractical.

Q. Assume that this application is granted, and you have delivered a truckload of granite down in Vermont and there is no shipment moving back from Vermont to the South Dakota area, would you lease that truck out to somebody else in order to make it a pay haul?

A. No, that truck would remain in Berry.

Mr. Cronon: That is all.

Exam. Roberts: Mr. Morken.

Redirect examination.

By Mr. Morken:

Q. If you will refer to page 4 of Exhibit 5, the profit and loss statement covering your granite trucks, now, as I understand it, that covers five tractors and five trailers and one straight job?

A. That is right.

Q. And under expenses, the second and third items, almost seven thousand dollars for parts and about eight-five hundred dollars for tires?

A. Right.

Q. In other words, over a thousand dollars a vehicle for parts and over a thousand dollars for tires, and are those the items that you were referring to with Mr. Coyne that are unduly and exceptionally large due to your maintenance program at the close of the year 1951?

[fol. 149] A. Yes.

Q. Now, you mentioned that your equipment was recently inspected by the Interstate Commerce Commission. Who inspected it?

A. Road checks, highway checks on the road.

Q. Did an ICC employee inspect it?

A. That is what the cards that they gave our drivers said, "State and ICC inspected", two of them were inspected in Pennsylvania and two of them in Ohio.

Q. What is the man's name who published those tariffs?

A. Charles Carr.

Q. Does he hold an official position with the state of South Dakota?

A. Yes, rate expert.

Q. For the South Dakota Commission?

A. South Dakota Commission.

Q. Following Mr. Cronon's question with regard to back haul, if you have a truck that leaves South Dakota to an eastern state such as New York or Pennsylvania, if that truck took a load from Vermont to Texas, and then traveled empty from Texas to Grant County, would you consider that a back haul?

A. Yes.

Q. Would it be more profitable, then, to run the trucks from New York or Pennsylvania back to South Dakota empty?

A. Much more.

[fol. 150] Q. Would the same thing apply as far as if you ran a truck from Vermont to Texas, one that is stationed in Vermont, and then you dead headed it up to Grant County to get a load back to Connecticut or New York, would you consider that a back haul?

A. Yes.

Q. And would it be a more profitable operation than running the truck from Texas back to Vermont empty?

A. Yes.

Q. And would the same thing be true as far as all the rest of these states that you are applying for, not only out of Grant County but out of Vermont?

A. Very true.

Mr. Morken: That is all.

Recross examination.

By Mr. Coyne:

Q. With respect to this back haul, Mr. Schaffer, on page 4 of Exhibit No. 7, it shows income of nineteen thousand seven hundred thirty-six dollars and forty-nine cents for back haul at the present time, and it also shows nine thousand three

hundred fifty-seven dollars and sixty-two cents for "Lease." Those are all back hauls, aren't they?

A. Just a moment, please. What page?

Q. Page 4.

A. That is the granite trucking operation. The lease trucks and the back haul are two different items. Leased trucks are trucks that we leased under our authority to [fol. 151] haul granite out of South Dakota in the spring of the year from about February until the 30th of May or Memorial Day to take care of the overrun, and that is money received—just a moment—no, that is money received for the freight that those leased trucks hauled, and as you go down the line, you will see where there was a six thousand dollar item, it says under "Lease," six thousand one hundred sixty-seven dollars and twenty-four cents paid out to leased trucks for that labor for that work.

Q. You still did have back hauls of nineteen thousand seven hundred some dollars, correct?

A. That is correct.

Q. As compared to what would appear to be the outgoing haul of forty-nine thousand eight hundred some dollars, correct?

A. That is right.

Q. So percentage-wise you were back hauling somewhere about forty percent of the time?

A. A little less than forty percent.

Q. And that included your overall operation which in some instances only goes down to Illinois, Ohio, Indiana, and the like, is that correct?

A. That is right.

Q. And these back hauls of nineteen thousand occurred on such times as your equipment reached out to the east end of Ohio and into Pennsylvania and New York primarily?

A. They also occurred when they covered the states of [fol. 152] Indiana, Ohio, and Illinois.

Q. And those in those states would be back hauls of steel, however?

A. That is right.

Q. Which would only be a back haul for part of the way, correct?

A. What was that question?

Q. Which would only be a part-way back haul in some instances?

A. Well, no, if we only went into Illinois and Indiana, and you picked up a load of steel, I would say that would be almost a complete back haul, as you wouldn't be dead heading too far.

Exam. Roberts: Under what authority would that steel be transported?

The Witness: Under leasing our equipment to bona fide carriers that do have operating rights, such as Gateway Transportation, Moore Transportation, and Glendenning.

By Mr. Coyne:

Q. And you would have to share the profit on that leasing to such carriers?

A. That is right, common practice.

Q. Which would account for a reduction in revenue on back haul?

A. That is right.

Q. So that actually your trucks were probably busy on back hauls more than forty percent of the time?

A. No. This figure was the amount of money that we collected from those transportation companies.

Q. That is what you collected from them?

[fol. 153] A. From the transportation companies.

Q. Now, getting down to the expenses, the tires and parts that you put on at the end of the year to gain in income tax-wise, they were maintenance, weren't they?

A. Right.

Q. They were required or they wouldn't be done, is that correct?

A. Well, to a certain extent, yes.

Q. If you didn't do them, then you would have had to do them a few months later?

A. Yes.

Q. And from year to year they would be reflected in the middle of the year rather than at the end of the year?

A. That is right,

Mr. Coyne: That is all.

Recross examination.

By Mr. Cronon:

Q. Considering your present granite trucking operations only, what percentage of your movement back into South Dakota is empty?

A. Well, it would be about sixty percent.

Q. Empty?

A. Yes.

Further redirect examination.

By Mr. Morken:

Q. You understand, Mr. Schaffer, that if the proposed rules become effective you won't be able to lease these?

A. That is right.

[fol. 154] Q. And when and if that comes about, your net increase will be——

Mr. Cronon: That is objected to.

Exam. Roberts: Mr. Morken, I think you are taking unfair advantage here. We said we would only go around twice.

You may be excused.

(Witness excused.)

Exam. Roberts: We will recess until 2:30.

(Whereupon, at 1 p. m., a recess was taken until 2:30 p. m. of the same day.)

[fol. 155] AFTERNOON SESSION

Exam. Roberts: Come to order, gentlemen.

Mr. Morken: I will call Mr. McBride.

RICHARD T. MCBRIDE was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Please state your name?

A. Richard T. McBride.

Q. That is M-c-B-r-i-d-e?
A. That is right.
Q. Where do you live?
A. Montpellier, Vermont.
Q. By whom are you employed?
A. Barre Granite Association.
Q. What is the Barre Granite Association?
A. It is a trade association consisting of seventy-seven member companies all located in the Berre, Vermont, district. Five of the member companies are carriers. Five do custom sawing or polishing only, and the other sixty-seven are manufacturing finished monuments.
Q. This association, to what extent does it represent these manufacturers, and as far as this hearing is concerning involving proposed transportation to and from Vermont, does your association represent its members in traffic and shipping matters?
A. Yes.
[fol. 156] Q. And to what extent?
A. You mean that to shipments or——
Q. Yes.
A. Well, one of the departments of the association is a traffic department, and shipments of granite by all our members are consolidated into pool cars and shipped out of the district to various points around the country.
Q. Do your members make individual shipments on their own behalf?
A. Yes.
Q. And then they make some through pool cars that——
A. Under the name of the Berre Guild Consolidated Service and the name of the traffic department is the Berry Guild Consolidation Service.
Q. What is your position with the Berre Association?
A. I am the field representative.
Q. What do your duties involve?
A. Generally they are promoting the interests of the entire Berre district by calling on retail monument dealers throughout the country in an attempt to promote the sale of Berre monuments. You might call it a sort of a general good-will trouble-shooter representative?
Q. Do you sell granite?

A. No.

Q. You travel, though, out of Vermont?

A. Yes.

[fol. 157] Q. And do you call on witnesses such as Mr. Osborne, who testified as the first witness today—were you here when he testified?

A. Yes.

Q. Do you call on witnesses such as he?

A. Yes, retail monument dealers.

Q. When you call on a witness such as Mr. Osborne on behalf of the association, is part of your contact dealing with his transportation to and from the members of your association?

A. Yes.

Q. Does the territory in which you operate cover this middle-western part of the United States or in the part that is involved in this application?

A. Not all of the part that is involved in the application, but a good portion of it.

Q. And if we take a state like Iowa, do you call on the individual monument dealers throughout Iowa, as an example?

A. Yes, I would say that I see most of the dealers in the State of Iowa at least once a year.

Q. Do you know roughly how many dealers there are in a state like Iowa?

A. Well, I would be guessing, but I would say probably fifty-five or sixty in that area.

Q. Do you call on all of them on behalf of your association or only those that deal with your members of your association?

[fol. 158] A. Well, I call on most of them. I am trying to think of a word to describe what I am going to say. The fact that they would or would not deal with members of my association wouldn't deter me from calling on them. It is the fact that they are in the retail monument business and are potential members of my association.

Q. Again using Iowa, and if it is not typical, you tell me so, do you know the approximate number or the percentage of the, say, fifty-five monument dealers in a

state like Iowa that the members of your association ship to?

A. Well, again, if there are fifty-five or sixty, and I think that is about right, I would say that probably at least fifty of them would use some Barre granite.

Exam. Roberts: What other states in this area do you have dealers?

The Witness: I might answer that by saying that the members of our association ship Barre granite into every state but Nevada. We ship Barre granite into all states in this shaded area.

By Mr. Morken:

Q. Do you have any records with you of the number of cars or shipments or tonnage that were shipped by your association, that is, by the Barre Guild to, say, the states that are involved here or part of the states?

A. Well, I would have to answer you first by saying that you understand that in addition to the pool car serv- [fol. 159] ice which is rendered by the association, the members also ship less than carloads themselves and also ship carloads by themselves. Last year, or rather from the period, December 1st, 1950, to December 1st, 1951, our Barre Guild Consolidation Service shipped two hundred sixty-eight cars of granite to a little over nine hundred dealers in twenty-five states. That represented seven thousand four hundred seventy-two tons of granite, or almost fifteen million pounds of the two hundred and sixty-eight cars, one hundred and fifty-six of them went into the shaded area of the map.

Exam. Roberts: You indicated in answer to my question that you shipped to all these states except Nevada?

The Witness: It is shipped and sold but not necessarily by the Barre Granite.

Exam. Roberts: I understand that.

The Witness: We had none.

Exam. Roberts: We were speaking of these shaded states, your members shipped to all of those states?

The Witness: That is right.

By Mr. Morken:

Q. And last year?

A. One hundred fifty-six cars went into the shaded area on the map.

Q. And those cars were only the pool consolidated cars shipped by the Barre Guild, which is your association?

A. That is right.

[fol. 160] Q. Going back again to Mr. Osborne, would he be considered a typical customer of your members, or is he unique or different with his problems on transportation?

A. No, he is not unique. He would be more typical.

Q. When you call on the various monument dealers, do they register complaints with you on the quality or the type of goods as well as, say, transportation, damage or claims or anything of that nature?

A. Yes, they do.

Q. Are you using any truck service at the present time from Vermont to the shaded area, the states in the shaded area on Exhibit 5?

Mr. Coyne: I object to that until it is established that this witness ships granite. I have him noted here for stating that he does not sell granite.

Exam. Roberts: I think he should confine his answer to whether or not the Association hires motor carriers for shipments.

By Mr. Morken:

Q. Does your association, the Barre Guild, use any motor, or, first, do you use any motor carrier service at all on your pool shipments?

Mr. Coyne: Just a moment.

Exam. Roberts: Let's go back to the origin. I think we ought to find out whether the Guild actually does any hiring of motor carriers for the association members.

[fol. 161] Mr. Morken: All right.

Mr. Coyne: Yes, he is the Barre Granite Association, isn't he?

By Mr. Morken:

Q. Excuse me, and you correct me if I am not correct, but the Guild is a trade name?

A. That is right, the words "Barre Guild" and "Barre Granite Association" are used interchangeably.

Exam. Roberts: This Barre Guild Consolidated Service, does that use any motor carriers in the selection of transportation?

The Witness: No, only locally, and at the point of destination to haul from the rail head to the dealer's place of business and to pick up at the manufacturer's plant at Barre and bring it to the Barre Consolidation, it is a rail operation.

Exam. Roberts: It consolidates local shipments for movement out of Barre by rail?

The Witness: That is right.

By Mr. Morken:

Q. And it is all rail to the shaded states involved in this application on Exhibit 5?

A. Yes, the states in that shaded area to which we send cars are sent by rail.

Q. Do I understand that you do not use truck from, say, New York or Pennsylvania or some other point?

A. All those shipments, the shipments to the east coast are not handled by the Barre Guild Consolidation Service I might add that trucks are used in the east, but not by [fol. 162] the Consolidation Service, because we don't operate in the east with two exceptions.

Q. Now, when you call on these monument dealers, do they ask you to arrange truck transportation for them?

Mr. Coyle: That is objected to as hearsay.

Exam. Roberts: Objection overruled.

A. On many occasions I have had retail monument dealers state to me that they wished or hoped that truck service was available from the Vermont district to their place of business.

By Mr. Morken:

Q. And why is that?

Mr. Coyne: I object for the same reason, that it is hearsay, and I can't cross-examine the people who made the statement.

Exam. Roberts: Rephrase your question, Mr. Morken.

By Mr. Morken:

Q. Did they state the reasons to you as to why they wanted you to arrange for this truck service?

A. Yes.

Q. And what were they?

Mr. Coyne: Same objection.

Mr. Cronon: I join in that objection.

Exam. Roberts: Objection overruled.

A. They stated, and I am talking particularly about dealers in areas where our Consolidation Service doesn't operate. For example, we operate into eleven cities. The Consolidation Service has been satisfactory in most instances. I am talking about retail monument dealers who [fol. 163] are not located in those principal cities, and their reasons are that the Consolidation Service is inadequate for their needs. If they use the Consolidation Service and their granite goes into a break-bulk city and the delay involved in them either going to get it or it going on less than carload to them, it is so great that the Consolidation Service actually is of no benefit to them.

Exam. Roberts: Do you act as a broker for these members of your Guild?

The Witness: Well, I don't think the word is "broker." It is simply a department of the association.

Exam. Roberts: It is a clearing house?

The Witness: We are not a freight forwarder. This department of our association simply collects the freight from our member companies in the district.

Exam. Roberts: That is merely a local service?

The Witness: That is right, for our own members only.

By Mr. Morken:

Q. You mentioned that there were break-bulk points in eleven cities. Are any of those cities in this shaded area on Exhibit 5?

A. Yes, Chicago is, Kansas City is, St. Louis is, Springfield, Illinois and Davenport, Iowa, and that is all I can think of right now.

Q. Do you know Mr. Walther Freeman of Nebraska?

A. Yes, I do.

[fol. 164] Q. Is he situated where he could use your pool car shipments?

A. Well, I am actually not that familiar with Mr. Freeman's operations. I can say——

Exam. Roberts: Wait a moment.

By Mr. Morken:

Q. Do you have any example of a monument dealer or a customer, say, outside of Chicago or St. Louis that is so situated where they cannot use that pool car service?

A. Well, I would say that, for example, in Iowa, in Des Moines, Iowa, we have found in the past year's operation that dealers in that area have not used it, and the reason we are told and I am told by them in meeting with them that the area doesn't seem to have enough Barre granite at one time being purchased by monument dealers to make a pool car into that district.

Q. If the Barre Association had available a service such as is proposed by Mr. Schaffer, would they use it?

A. Well, I cannot say that the Barre Granite Association would use it. I would say that our members——

Mr. Coyne: I object to stating in speculation as to what others would do. He is speaking for the Barre Granite Association and if they could not use it——

Exam. Roberts: You should confine your answer to the Barre Granite Association.

By Mr. Morken:

Q. Let me ask you this question. Will you name two, three or four of the larger, say, manufacturing members of your association, the names of the companies?

[fol. 165] A. Rock of Ages Corporation, Jones Brothers Company, Johnson and Gustafson, Buttura and Sons, and Beck and Beck.

Exam. Roberts: Where are they located?

The Witness: All in Barre, with the exception of Rock of Ages, whose finishing plant is in Northfield, Vermont.

By Mr. Morken:

Q. Did you discuss your appearance here today and this testimony with any of those individual companies?

A. Yes, I discussed it with representatives of the Rock of Ages Corporation, the representative of Jones Brothers Company, and with Mr. French, the general manager of the Barre Granite Association.

Q. Did those companies delegate to you the responsibility to appear in this proceeding on their behalf and represent their interests as shippers of Granite?

A. Yes.

Q. Now, will the Jones Brothers or Rock of Ages people use the proposed service?

Mr. Coyne: I object to that as hearsay. I have no opportunity to cross-examine the man from Jones Brothers.

Exam. Roberts: Objection sustained.

By Mr. Morken:

Q. Have you ever heard prior to today or within the last, say, yesterday of Mr. Dingman who runs the Granite City Transfer Company, a granite hauler?

A. No.

Q. Has your association or its members ever been so-
[fol. 166] licited by Mr. Dingman who hauls granite?

Mr. Coyne: I object to the form of the question. He may answer as far as the Association, but I object to the specific members.

Exam. Roberts: Objection sustained.

By Mr. Morken:

Q. As far as your association is concerned, have you ever been solicited by Mr. Dingman?

A. No.

Q. Did you ever hear of a Michael Benz carrier having authority to transport granite from Vermont out into this area?

A. No.

Q. If Mr. Benz or Mr. Dingman had transported granite from the quarry or Montpelier, Vermont, is that service of such that it would be called to your attention?

A. Yes.

Mr. Coyne: Has he answered the question?

The Witness: Yes.

By Mr. Morken:

Q. Mr. McBride, did any of the individuals manufacturing and shippers of granite authorize you as their agent to appear here in their behalf at this proceeding?

A. May I have the question repeated, please?

(Question read.)

A. Yes.

By Mr. Morken:

Q. And what companies are those?

A. Specifically Rock of Ages and Jones Brothers.

[fol. 167] Q. Now, as an agent for Rock of Ages, will that company use the proposed service?

Mr. Coyne: That is objected to on the same basis as I did before, that is, authorizations through oral conversations with these people, and I don't know what their reason may be.

Mr. Cronon: I join in Mr. Coyne's objection, as you can't establish the agency between Rock of Ages by the testimony of this witness.

Exam. Roberts: I will sustain the objection.

By Mr. Morken:

Q. Will you describe the size or the area for the sources of granite in Vermont by counties or towns? If a map would help you, I have a map. Would you like to see a map?

A. I don't need a map. In the Barre district today there are five operating quarries. The five of them are located either in Graniteville or Websterville, two towns both about three miles outside of Barre. This is in Washington County. With the exception of one finishing plant, all of the other members of the association are located in Washington County. The one plant that isn't is in Williamstown in Orange County.

Q. Which is the adjoining countó to Washington County?

A. Yes. The members are located in Barre, Montpelier, Waterbery, Northfield, and East Barre, those are the member companies of the association.

Q. Without referring specifically to a map, are those points all within a ten-mile area or a five-mile area or how [fol. 168] big an area are we talking about?

A. Well, I would say that probably sixty-five of the manufacturing plants are located within ten miles of the quarries, and the quarries and the majority of the plants are all located within a ten-mile area.

Q. All in Washington and Orange Counties?

A. That is right.

Q. Do you know what the existing rail service is as far as time of delivery from Barre, Vermont, to destinations in the middlewest is concerned?

Mr. Cronon: That is objected to as too general a question.

By Mr. Morken:

Q. Do you know what it is to some representative points, and do you know the name of the point, approximately?

Q. Well, I would say—are you speaking of less than carload or the Consolidation Service?

Q. Both.

A. The carload service into points in the shaded area, I would say, runs about from the best service, which is probably Chicago, between six and eleven days, but the less carload service to dealers with whom I have discussed the matter.

By Mr. Cronon:

Q. Do you know of your own knowledge, Mr. McBride, or is this something that the dealers told you?

A. This is something that the dealers told me.

Mr. Cronon: I object to that as hearsay.

[fol. 169] Exam. Roberts: Objection sustained.

By Mr. Morken:

Q. Do you know if the L.C.L. service is substantially longer than the carload service that you get?

Mr. Cronon: Same objection.

Exam. Roberts: He can answer.

A. Simply from being told by dealers.

Mr. Cronon: Objection.

Exam. Roberts: Objection sustained.

By Mr. Morken:

Q. Is there a need for speed on the movement of small less than carload shipments from Barre, Vermont, to points in the middlewest?

A. Yes.

Mr. Coyne: That is objected to as being incompetent of this witness.

Exam. Roberts: The witness has answered the question.

By Mr. Morken:

Q. What is that need for speed?

A. The fact that in many cases monuments are sold, as Mr. Osborne stated, people seem to take a long time to buy them, and once they buy them, they want them in a hurry, and the only service that has been available out of Barre is the Consolidation Service into only eleven cities. The speed is important because in many cases these retail monument dealers who do not have specific types and sizes of Barre granite monuments in their stock will switch their customers to other granites.

Q. Does the Barre area provide—we have covered the [fol. 170] different granites—a different type of monument work other than granite areas?

A. Yes. Baree has always been known historically as more or less the memorial art center of the world. Barre has also been noted for the very fine skilled craftsmen and artisans who live and work in that district. Barre's reputation has been built on finely carved and sculptured memorials as compared with markers or something which would have little or no sentimentation or fine craftsmanship on it.

Q. Is your position on breakage similar to that of previous witnesses, such as Mr. Stengel and Mr. Osborne? Did you hear them testify about the difficulty of breakage?

A. The same is true about Barre granite. That is subject to chipping if handled roughly.

Mr. Morken: You may examine.

Mr. Coyne: I have no questions.

Exam. Roberts: Mr. Cronon?

Cross-examination.

By Mr. Cronon:

Q. Mr. McBride, are the quarries that you speak of around Barre served by some of the Vermont railways?

A. Yes, they are served, as the Barre and Chelsea Railroad runs from Baree to the quarries.

Q. How about the Ruthland Railway, does that serve any of the quarries?

A. No, not that I know of.

[fol. 171] Q. However, such railroads as the Ruthland and Central Vermont interchange with the short line you speak of, don't they?

A. Yes.

Q. Now, that Barre and Chelsea Railroad, their main business is hauling granite?

A. That is right.

Q. And that probably constitutes a good ninety to ninety-five percent of their revenue, wouldn't you say?

A. I don't know.

Q. A substantial part of it, though?

A. A substantial part.

Mr. Cronon: I think that is all.

Exam. Roberts: Redirect examination?

Redirect examination.

By Mr. Morken:

Q. With regard to the railroad hauling, if this authority is granted, does your association plan to discontinue the use of rail service?

A. No.

Q. Would the proposed service be used as an adjunct in addition to the existing rail service?

A. I believe so.

Mr. Morken: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: Call the next witness.

[fol. 172] Mr. Morken: I will call Mr. MacCarty.

Howard J. MacCarty was sworn and testified as follows:

Direct examination.

By Mr. Hetland:

Q. Will you state your full name, please?

A. Howard J. MacCarty.

Q. What trade name or company name do you use?

A. MacCarty Memorials.

Q. Where is your business located?

A. Hutchinson, Kansas.

Q. How long have you been in the business?

A. My father preceded me in the work. This is my twenty-fifth year.

Q. Now, will you describe generally what type of business you are engaged in?

A. The sale of private and public memorials.

Q. On a retail level?

A. That is correct.

Q. What type of granite do you use in your business?

A. Barre, Vermont, granite, Wisconsin granite, Dakota granite, and St. Cloud granite principally.

Q. Now, are you a fabricator or processor anything like that?

A. In a very small way.

Q. You buy primarily finished pieces from the manufacturers?

A. That is correct.

Q. Now, are you familiar with the application of Mr. [fol. 173] Schaffer and the proposed operation?

A. I presume so.

Q. And you know that Kansas——

Exam. Roberts: Would you put those in a more interlocutory form?

By Mr. Hetland:

Q. You know that Kansas is one of the states that Mr. Schaffer is proposing to ship granite from Vermont?

A. I do.

Q. Will you state what your present transportation facilities from Vermont to Hutchinson, Kansas, are?

A. From Barre, Vermont, our shipments usually originate, I think it is, out of Barre, Montpelier, and Wells River, and then either Canadian National and New York Central into Ohio. It is the Santa Fe or Rock Island the rest of the way, and that is true with local shipments, with consolidated carloads the routing into Kansas City is not left to me, and the car has its bulk broken, as we call it, at Kansas City, and then we use either a common carrier or rail line from Kansas City into Hutchinson.

Exam. Roberts: Motor common carrier?

The Witness: That is right.

By Mr. Hetland:

Q. How far is Kansas City from Hutchinson?

A. Road miles about two hundred and thirty.

Q. In other words, there is one additional from Kansas City in your pool car shipments?

A. That is correct.

[fol. 174] Q. Now, approximately how many pounds of granite do you purchase a year?

A. From Barre?

Q. From Barre.

A. I can't confine myself to facts on this. I would hazard a guess of approximately forty to sixty thousand pounds.

Q. Forty to sixty thousand pounds a year?

A. Yes.

Q. Now, how many shipments would that be a month, break it down pool car and L. C. L.?

A. Well, I would say we would have approximately six local shipments a year.

Q. That is L. C. L.?

A. That is correct, and we would engage in approximately four pool car shipments a year.

Q. What poundage would you generally have on an L. C. L. shipment?

A. Well, nearly the minimum, as little as possible. That's too difficult. I would hazard a guess of about three thousand pounds, not more than that.

Q. Now, is there any motor carrier transportation available from Vermont to Hutchinson, Kansas?

A. Not to my knowledge.

Q. Have you ever heard of Granite City Transfer or Mr. Dingman prior to this morning?

[fol. 175] A. Not to my recollection.

Q. You have not been solicited by Granite City Transfer or Mr. Dingman?

A. Not to my recollection.

Q. If motor carrier service had been available prior to Mr. Schaffer's service, which he is proposing to offer here, would you have used such service?

A. Not necessarily.

Q. You are interested in obtaining motor carrier service from Vermont to Kansas?

A. If it is efficient and responsible.

Q. Why are you interested in obtaining motor carrier service?

A. It is impossible to my way of thinking to crate such weights as we have in such a manner that it is positive

protection for its contents. Therefore, the less handling or transfers, it is distinctly to our advantage.

Q. What has been your experience on breakage with rail transportation?

A. In previous years we have had a great deal of trouble. Of recent years we have had a few claims, but I don't think that our claims have been an undue amount in recent years, particularly because of the cooperation of our shippers at Barre in using extreme care in crating.

Exam. Roberts: Must all rail shipments be crated?

The Witness: That is correct, sir, unless they are just slabs.

[fol. 176] Exam. Roberts: How about in the use of motor carrier service, would it be necessary to crate those shipments?

The Witness: Partially, yes, sir.

By Mr. Hetland:

Q. Would you be able to cut down particularly the crating necessary with motor vehicle transportation?

A. I would think so.

Q. And you heard the testimony this morning with regard to the characteristics of granite, that it is subject to breakage if handled roughly or if the crates are broken in transit?

A. Yes, sir.

Q. That is definitely a characteristic of granite?

A. Yes.

Q. How about the spoilage and staining by grease and chemicals, what effect do they have on granite?

A. That is true.

Exam. Roberts: What is true?

By Mr. Hetland:

Q. I asked you what effect it might have. Is there any effect that grease and oil and other chemicals have upon granite?

A. Yes.

Q. What effect is that?

Mr. Cronon: Just a minute.

There isn't any evidence in this record to date that by virtue of rail or motor carrier any oil was applied to granite shipments, so I object to that question as incompetent.

[fol. 177] Exam. Roberts: I think counsel ought to clarify that, whether he is comparing this service with rail or what.

Mr. Hetland: Maybe I can lay a bit of foundation.

By Mr. Hetland:

Q. In your L. C. L. shipments have you ever experienced any spoilage on your Barre granite?

A. No, of any appreciable amount.

Q. Have you experienced any?

A. Negligible.

Q. On your dry freight?

A. I have to a little greater extent.

Q. What is that stain, how does it appear, what effect does it have on the granite?

A. Granite will absorb petroleum content off of any container that becomes loose and quite nearly with our heavy-weight shipments are always on the bottom, as they should be, of any car or means of transportation, so the lighter objects are nearly piled on top of them, so any breakage of some petroleum product will cause a definite mark, stain, which is extremely difficult at times to remove.

Q. Now, it is therefore advantageous to you to have a shipment composed completely of granite, as you get in your present L. C. L. shipments, and not a mixed car?

A. Yes.

Q. What has been your experience on the time for delivery from Barre, Vermont, to Hutchinson, Kansas, via rail?

[fol. 178] A. Now, you are speaking of local shipments or pool car shipments?

Q. Let's take the L. C. L. first, and then the pool cars next.

A. Actually there is very little difference in the length of time that is required. I would say normally or usually

from fourteen to approximately twenty-one days, and if the gentlemen will permit, I would like to qualify my statement regarding very little difference in time between the local shipments and consolidated car shipments. The difference in time being split, the time of arrival, is due to the fact that three or four days' time is usually lost, for instance, with us at Kansas City in breaking this bulk of this car that comes into Kansas City, and then rerouting the shipment on to Hutchinson.

Q. Do you have any of your freight bills with you?

A. A few, yes, sir.

Q. Would you look at those freight bills, refer to 1-E, and give the exact dates of the shipment, where it originated, where it was shipped, and the time that it arrived?

A. Here is one. This is in a pool car to Kansas City from the Jones Brothers Company of Barre for fifty-four hundred pounds, and it was shipped to me according to my invoice April 11, arrived in Hutchinson, April 27. Here is another one.

Mr. Cronon: Just one minute.

I understood that this testimony was to be from freight bills, but you are testfying from invoices.

[fol. 179] The Witness: No, sir, here are my bills.

Mr. Cronon: You said invoice.

The Witness: Here is the invoice.

Exam. Roberts: You can bring that out on cross-examination.

A. Here is an invoice dated July 13. The freight bill shows that it was shipped July 13, and it arrived in Hutchinson, August the 20th, this was last year, eleven thousand two hundred seventy pounds.

By Mr. Hetland:

Q. Are those examples typical of your L. C. L. shipments?

A. This last one is very unusual, much longer than normal.

Q. Now, you are located in Hutchinson, Kansas. What type of an area do you serve, about what radia outside of Hutchinson, Kansas?

A. I think we could flatter ourselves by saying that we cover the southwest quarter of Kansas.

Q. You would then deliver monuments order from you to points and places one hundred miles distant from Hutchinson?

A. Oh, yes. We have had two trips this year to Garden City, which is one hundred eighty-five miles from Hutchinson each way.

Exam. Roberts: These trips are made in your own vehicles?

The Witness: That is true.

By Mr. Hetland:

Q. Now, when you are using your present rail service, how is the time for deliveries, is it certain or uncertain as to when those pieces of granite from Barre, Vermont, [fol. 180] will arrive in Hutchinson, Kansas?

A. I am sorry, I don't understand your question.

Q. Are you able to predict with any degree of certainty when granite shipped from Vermont will arrive in Hutchinson, Kansas?

A. Within approximately ten days, I think, on the average.

Q. Assuming that you have two monuments going out one hundred miles from Hutchinson and assume that both of the monuments were shipped a day apart, would you expect to carry both of those monuments out from Hutchinson to one hundred miles out in the same truck on the same day, your own truck?

A. Yes, sir.

Q. Assuming now that you have a variance, as you have testified, of seven days in delivery, will you make a burden upon your business practice, increase your operational difficulties?

Mr. Coyne: May it please the examiner, I object to the leading and suggestive manner of the counsel here.

Exam. Roberts: I have cautioned counsel once before about the leading nature of the questioning. I think he can rephrase the question.

Mr. Hetland: I will rephrase the question.

By Mr. Hetland:

Q. Is it necessary to cut down on your own private carriage of memorials to points and places outside of Hutchinson, Kansas?

A. At certain times of the year.

Q. Will you explain that, please?

[fol. 181] A. In the spring of the year we are rushed, and it is not only a matter of time, but a matter of savings to make two or three more deliveries on one trip. It is quite necessary to have these shipments synchronize themselves into our place of business in order to expedite delivery.

Q. In other words, it is very important to be able to predict the exact time of delivery?

Mr. Cronon: That is objected to as a leading question.

Exam. Roberts: Will you rephrase the question?

By Mr. Hetland:

Q. Is the time of delivery important in the monument business?

A. Yes.

Q. Do you consider speed an essential element in the transportation of granite from Vermont?

A. Yes.

Exam. Roberts: These shipments that you receive from Barre, Vermont, don't you perform some sort of work on them in your shop before you take them out?

The Witness: Sometimes we do and sometimes we don't.

Exam. Roberts: As a general rule, isn't it an unfinished product that comes in there, you don't do any lettering?

The Witness: We do some.

Exam. Roberts: What percentage would be finished and what in the rough?

The Witness: I would ~~say~~ seventy-five per cent is finished.

[fol. 182] Exam. Roberts: And it is ready for direct movement to the customer?

The Witness: That is right.

Exam. Roberts: Proceed.

By Mr. Hetland:

Q. Is your business, your monument business, a periodic type of business, such as Mr. Osborne testified to?

A. Yes.

Q. When is one of your peak periods?

A. From March, about March 15, to approximately June 1st.

Q. Covering the Memorial rush?

A. That is right.

Q. When is the cut off point for taking orders for the Memorial Day rush for Barre granite?

A. If the work is small and simple in fabrication, I would say about April 1st.

Q. If you had motor carrier transportation available, could you extend that period closer to May 30?

A. Yes, sir.

Q. By how much time?

A. Depends on the efficiency of the carrier, but if it is as efficient as this gentleman described, I would say ten days to two weeks, more or less.

Q. You purchase granite from the Jones Brothers in Barre, Vermont?

A. Yes, sir.

[fol. 183] Q. Have you ever requested motor transportation from the Jones Brothers?

A. No, sir.

Q. Why?

A. I didn't think there was any.

Q. Do you want motor transportation service from Barre?

A. If it is good service.

Mr. Hetland: Your witness.

Cross-examination.

By Mr. Coyne:

Q. Mr. MacCarty, do you get granite from St. Cloud, Minnesota, at the present time?

A. Yes, sir.

Q. And does some of that come in by Granite City Transfer?

A. No, sir.

Q. You have never requested motor truck?

A. I didn't know it was available.

Exam. Roberts: Answer the question, please.

A. No, sir, I haven't.

By Mr. Coyne:

Q. How much research or survey did you make to determine what motor carriers services were available?

A. None.

Q. From Barre.

A. You are asking me—repeat your question.

Q. How much, if any, research or survey did you do to determine the existing motor carriers facilities from Barre, Vermont?

[fol. 184] A. I have talked with the personnel and various times they have told me there wasn't any existing facilities other than rail.

Q. You made no inquiry other than that?

A. No.

Q. You made no inquiry to inquire about it at your local I. C. C. office?

A. No.

Q. How did you know about this hearing today, then?

A. Mr. Schaffer about a year ago asked me if I would care to ship some of my granite by way of his means of transportation, and I hesitated because I didn't know anything about the qualifications of any of the trucking lines.

Q. He came down to your place of business and solicited your support for this application?

A. He called me.

Q. You pointed out to him that you got the equivalent of one carload a year from Barre?

A. No.

Q. That is actually what you get right now?

A. I would say so, approximately.

Q. And in your discussion with him did you point out

that ordinarily your stones are received in quantities ranging three thousand pounds or less?

A. I don't recall that I did.

Q. He didn't go into any inquiry about that at all?

[fol. 185] A. About the tonnage, not to my recollection.

Q. Did he point out to you that if you had a request to go and get one or two or three stones from Barree that he would take a truck and drive up to Barre and bring them down from Barre and bring them down to you personally?

A. No, I don't believe so.

Q. Has he told you at all how he is going to serve you other than what you have heard on the witness stand?

A. Yes.

Q. And is that service that he is going to perform for you going to be in conjunction with split delivery loads with other retail dealers like you?

A. I don't know.

Q. Well, then, what did he tell you, how did he say he was going to serve you?

A. He told me that he could assure me of not more than eight to nine-day service into Hutchinson.

Q. Did he say that would be contingent upon anybody else having some come into that area?

A. I don't recall that.

Q. He didn't discuss the quantity that you wanted to ship with him?

A. I don't recall that.

Q. Are there other dealers around Kansas that you can make up truckloads with?

[fol. 186] A. I think so.

Q. And if this authority would be granted, I presume you would undertake to do that?

A. That is Mr. Schaffer's business.

Q. In other words, Mr. Schaffer is going to have to solicit or work out the pool or the split loads among the other dealers so that he can perform the service for you?

A. I would assume something of the kind.

Exam. Roberts: Would you have any need for full truckload service?

The Witness: Rarely, personally.

By Mr. Coyne:

Q. Now, if it should develop that you and, say, two or three other dealers who might be your friends or business associates down in Kansas had need for a truckload of Barre granite and were able to get that granite from the producers in Vermont, would you have any objection to requesting Granite City Transfer to perform that service for you?

A. I would ask only the same requirement of them that I would of Mr. Schaffer. I would want to be assure of their efficiency and responsibility.

Q. If the Interstate Commerce Commission has, as a result of a public hearing in the past, found Mr. Dingman doing business as Granite City Transfer a fit and reliable carrier and has authorized him to perform that transportation, would you then be willing to request for a try with his services?

[fol. 187] A. If Mr. Schaffer hasn't shown initiative in this, I think, yes.

Q. Well, if this application is denied to Mr. Schaffer, are you willing to use Mr. Dingman's service?

A. If it is efficient and responsible.

Q. Then, can we say that as far as your actual transportation needs are concerned, you would use Mr. Dingman if after usage you determine that he is a fit and proper reliable carrier?

A. To some extent, yes, sir.

Q. You have no past experience to make any statement today that Mr. Dingman's service would not be adequate for your business, have you?

A. No.

Q. And it is not your intention here today to tell the Examiner or the Interstate Commerce Commission that Mr. Dingman and the Granite City Transfer as an authorized carrier are not adequate to perform this service?

A. I know nothing of their background.

Mr. Coyne: That is all.

Exam. Roberts: Mr. Cronon.

Cross-examination.

By Mr. Cronon:

Q. Mr. MacCarty, do you receive any carload shipments of granite via rail from Barre?

A. No, I don't like to take time. I would like to qualify that since so much of our work is finished at the plants, [fol. 188] there is no occasion for us to hold up the carloads.

Exam. Roberts: Which plants, the Barre plants?

The Witness: That is correct, sir.

By Mr. Cronon:

Q. So that all of your shipments are less than carload by rail?

A. Or the consolidated car, of course.

Q. Now, you said something about fourteen days by rail from Barre to Hutchinson?

A. Yes.

Q. Do you get some of your shipments in less than fourteen days?

A. You are asking me to hazard a guess, and I will try to be fair about it. I would say that approximately, I can't recall any that have come in in ten days, but I think I am pretty safe in saying that most of them would run fourteen days or more.

Q. Some of them might run between eleven and fourteen, perhaps?

A. It would be very much in the minority.

Q. Your competitors down there in southwestern Kansas also receive their shipments by rail, I suppose, don't they?

A. I assume so.

Q. So that the fact that there is no motor carrier service rendered no competitive advantage to them or to you, you are all on the same basis?

A. No. We are an older company than any of the others. [fol. 189] We used to have a branch at Garden City, so we do a great deal of work there. So in order to be

competitive with those shops who are in the local vicinity we must be able to give comparative service to what they can give, even though we are operating at a distance.

Q. But if they get their granite from Barre, it takes them just as long as you?

A. Yes.

Q. So that the only party who has to wait fourteen days for their headstone is the family who is buying the product from you, isn't that right?

A. Yes, sir.

Mr. Cronon: That is all.

Exam. Roberts: Let's proceed.

Redirect examination.

By Mr. Hetland:

Q. Have you ever been solicited since December 1st, 1951, by Granite City Transfer?

A. No, sir.

Q. Did you consider yourself a typical small monument dealer in Kansas?

A. Yes.

Q. Your situation would be representative of other small dealers in the state?

A. Yes, sir.

Q. Assuming Mr. Schaffer's application is granted, would [fol. 190] you be willing to accept shipments on a split load basis whereby Mr. Schaffer would make deliveries in, say, Illinois, Missouri, and Kansas in bringing an amount of granite to you?

A. If his service was careful and responsible, yes, you bet.

Q. Would you consider it to be a business advantage to have smaller, more frequent shipments of granite from Barre, Vermont, to Hutchinson, Kansas?

Mr. Coyne: I object to the suggesting and leading form.

Exam. Roberts: Objection sustained.

By Mr. Hetland:

Q. Under the present rail transportation facilities, how large an inventory must you carry?

Mr. Cronon: That is objected to as too general, how large an inventory of what?

Mr. Hetland: Of granite from Barre, Vermont.

Exam. Roberts: Objection overruled.

A. That would vary. This time of the year we are pretty well cleaned down, as I call it.

By Mr. Hetland:

Q. Would the proposed service permit you to reduce the inventory of Barre, Vermont, granite held by you or used by you?

A. Not a great deal, because practically all of our work is coming in finished, anyway.

Mr. Hetland: That is all.

Exam. Roberts: Recross?

Mr. Coyne: No, sir.

[fol. 191] Mr. Cronon: Nothing further.

Exam. Roberts: You are excused.

(Witness excused.)

Exam. Roberts: Let's take a recess.

(Short recess.)

Exam. Roberts: We will come to order, gentlemen.

Mr. Morken: I will call Mr. Walther.

NORRIS E. WALTHER was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Will you state your name, please?

A. Norris E. Walther.

Q. That is W-a-l-t-h-e-r?

A. That is right.

Q. Where do you live?

A. Fremont, Nebraska.

Q. What is your business?

A. I am in the retail monument business.

Q. In an effort to shorten this somewhat, you have been present here in the hearing room all day?

A. That is right.

Q. You are familiar with what is proposed?

A. That is right.

Q. And you have heard the testimony of the previous witnesses?

A. Yes, sir.

[fol. 192] Q. Now, generally speaking, is your monument business and your purchase of Barre, Vermont, granite similar to the preceding witnesses?

A. Generally, yes.

Q. Is it different in any way?

A. In as much as I am perhaps a smaller dealer, and I buy the Barre granite, the percentage is less.

Q. About how frequently do you get shipments from Vermont?

A. Six or seven times a year, perhaps.

Q. How do they come to you now?

A. Sometimes we are able to get a pool car, but generally in less than carload lots.

Q. Is your situation with respect to damage, I mean did you sustain damage or breakage similar to the other people?

A. That is right.

Q. Do you have any need in your business for a trucking service from Vermont to Fremont?

A. In my sized business it would be very advantageous to have a service like that.

Q. Why is that?

A. Inasmuch as we are located near to a large what we call retail manufacturing concern, a retailer who does his own manufacturing, his promises of delivery can exceed our promises under the existing situation of comparatively slow delivery, so that it would put us to a much better [fol. 193] advantage if we could rely on a delivery date.

Q. Do I understand he has rough stone on hand and he manufactures where you do not manufacture?

A. That is right.

Q. Everything you order is finished stone?

A. Everything we order is finished, except the processing, as far as the carving and lettering, we do almost one hundred per cent of that ourselves.

Q. I see. How would this proposed service permit you to be more competitive, say, with this larger manufacturer?

A. There are several ways, the chief of which would be the speed of delivery at the pressing times of the year when deadline dates must be met, and it also would accrue to, I believe, a lower rate than we ordinarily get because we have not the use for full carloads of Barre granite that most larger dealers do.

Q. Is your interest in this proceeding one involving the speed of the service or is your interest primarily in a lower rate?

A. Mainly in the speed of delivery.

Q. Are you getting any granite in by truck at the present time?

A. Yes, we are.

Q. And from where?

A. Where? Milbank, South Dakota, and from Cold Spring, Minnesota, and St. Cloud, Minnesota.

Q. You are familiar with truck service and trucks hauling granite?

[fol. 194] A. Yes, sir.

Q. Are you able to compare that with existing rail service?

A. Yes.

Q. How do you compare it?

A. It is faster even at that short distance and much more convenient.

Q. Are you on a rail siding?

A. No, sir.

Q. If a shipment comes to you by rail is it delivered to your door, or do you have to make arrangements to pick it up?

A. On less than carload shipments it is delivered to our door.

Q. Is there additional handlings in rail over truck?

A. Oh, yes.

Q. Is it to your advantage to have a service where there will be less handling of your merchandise?

A. Yes, it would be, as you would have less chance for damage to occur. Every time you handle a piece of stone there is one more change of damaging it.

Q. Would a faster service permit you to maintain a lower inventory?

A. Decidedly so.

Q. Would that be an advantage?

A. From an economic standpoint, yet, it would mean less stock tied up on our hands for perhaps seventy-five percent of the year.

[fol. 195] Q. Have you been interested for sometime in truck service out of the Barre area to Fremont?

A. I have often wondered why we couldn't get it.

Q. If such a service were available to you, would it have meant a saving to you in your business?

A. Yes, it would.

Q. Are you aware of the Dingman Company, the Granite City Transfer?

A. I know the company, yes.

Q. Have you ever used the company?

A. Yes, sir.

Q. When?

A. At various times over a period of my own personal experience in the past six years, perhaps.

Q. Has that service been satisfactory to you?

A. Not always.

Q. Why not?

A. We had occasion to put in a claim for damages, and the claim was ignored. It took us approximately three years to get an answer to a letter, and I had to all personally to St. Cloud to even get to talk to them.

Q. Do I understand that at the time the claim was filed it was three years before it was paid?

A. That is right.

[fol. 196] Q. During that three-year period did you endeavor to follow up on this claim?

A. I wrote several letters, with no answer. Approxi-

mately one year after the letters I called personally at the Granite City Transfer Company's office in St. Cloud on my own initiative.

Q. Did they have a record of the claim?

A. Yes, sir.

Q. While you were there did they pull it out of the file, and did you see it?

A. That is right.

Q. But it hadn't been paid in that year?

A. No.

Q. Was the claim ever denied?

A. They told me at that time that the next time I had a shipment down that way I could deduct that amount out of the freight shipment rather than paying me the claim.

Q. Did the claim arise from the handling of merchandise enroute?

A. No. The claim arose from the apparent inability of a truck driver to back underneath our travelling crane.

Q. And what type of damage did he do?

A. He broke a finished piece of work, lettered, carved, and ready to set.

Q. He backed his truck into it?

A. That is right.

[fol. 197] Q. Do you feel that your past experience with Mr. Dingman as a result has given you confidence as far as using that service in the future, if it was available to you out of Barre, Vermont?

A. Out of Barre?

Q. Yes.

A. If it were the only service available, I think that I would still consider it reluctantly.

Q. I gather if this service is granted and you use Mr. Schaffer you are not going to take any business away from Mr. Dingman?

A. We never had any shipped from Barre by Mr. Dingman.

Q. If it develops here in the record that Mr. Dingman does have authority and has had autority for sometime from Vermont to your area, would the lack of his rendering a service to you be a disservice?

Mr. Coyne: I object to that as being incompetent. The law is well settled that the shipper has the duty of determining who the authorized carriers are.

Mr. Morken: The law is well settled.

Exam. Roberts: Objection overruled.

A. I would say that he certainly didn't advise us of any such available service.

By Mr. Morken:

Q. And if he had, would you have endeavored to use it?

A. Yes, sir.

Q. Do you feel that there is a real need in your business [fol. 198] for Mr. Schaffer's business as proposed?

A. I feel there is definitely a real need inasmuch as in our part of the country dealers are widely separated. We have large territories. Delivery is a major factor, and I think here is a real need for that type of service in less than carload shipments.

Q. Would it be possible that upon the arrival of Mr. Schaffer's truck at your plant in Fremont that you might order him to deliver it on out to some other town in Nebraska as a continuing part of his through-common carrier sdrvice?

A. Not generally. It is a possibility, but it wouldn't be practical.

Mr. Morken: You may examine.

Exam. Roberts: May I ask you a question?

Do you use Mr. Schaffer's service out of Milbank at the present time?

The Witness: No, sir.

Exam. Roberts: You have never used his service?

The Witness: Yes, we have in the past.

Exam. Roberts: Has it been satisfactory?

The Witness: Yes, sir merely a difference in the companies that we purchase from is all.

Exam. Roberts: In other words, you purchase no granite from the Dakota granite companies?

The Witness: Not from the Dakotas.

[fol. 139] By Mr. Morken:

Q. So that it is clear you purchase from the Hunter company?

A. Yes, sir.

Q. Whose trucks is it that deliver to you?

A. Hunter has used his own trucks from Milbank to us.

Cross examination.

By Mr. Coyne:

Q. Mr. Walther, you said that you had a smaller volume than Mr. MacCarty from Barre?

A. Volume, you mean tonnage-wise?

Q. Yes.

A. I would say that we use perhaps only about twenty- to twenty-five thousand pounds of Barre granite a year.

Q. Now, when was the last time you used Mr. Dingman's service from St. Cloud?

A. Of my own volition, three years ago. It was used once this spring without my knowledge.

Exam. Roberts: Was that service satisfactory?

The Witness: Yes, sir.

By Mr. Coyne:

Q. To make the record short but clear on the matter, Mr. Dingman's service was satisfactory to you except for this claim, isn't that right?

A. Yes.

Q. And this claim involved twenty-three dollars?

A. Twenty-three dollars and ninety cents.

Q. And to make the record further clear, the item that [fol. 200] was damaged in this particular claim was an item being transported or an item on your lot?

Mr. Morken: I object to that as repetition.

Exam. Roberts: Objection overruled.

A. It was an item on our lot.

By Mr. Coyne:

Q. It was nothing that he was carrying?

A. My only difficulty with Mr. Dingman has been that I have to get out on the truck in the middle of the night and help them unload their granite.

Q. The damage that you complained of here was an item on your lot and not one that he transported down to you on that load?

A. That is right.

Q. And at the time what happened is that the truck backed into a monument on your——

Exam. Roberts: I think that has been answered.

By Mr. Coyne:

Q. The truck backed into a monument on your lot?

A. Yes.

Q. You were directing the truck at the time it was backing up?

A. Directing it?

Q. Directing the driver.

A. I certainly didn't want him to run into my steel crane.

Exam. Roberts: I think this is a little argumentative.

Mr. Coyne: There is a lot in here with a twenty-three dollar claim.

Exam. Roberts: I think that is the only instance with [fol. 201] which he was dissatisfied.

By Mr. Coyne:

Q. You made no inquiry of Mr. Dingman to determine whether or not he could transport granite from Barre, Vermont, to your place of business, did you?

A. Not directly. I have always asked why we couldn't get such a service and was told that it was not available.

Q. You did not ask Mr. Dingman?

A. No, sir.

Q. Did you ask the ICC director in your vicinity?

A. No.

Mr. Coyne: That is all.

Cross examination.

By Mr. Cronon:

Q. Do you know how many times a tombstone is handled from the time it is taken out of the ground in its rough shape until it is set in the ground at the cemetery?

A. That all depends on who is fabricating it, what kind of a stone, and how many surfaces are finished.

Q. Quite a few handlings, though?

A. Yes.

Mr. Cronon: That is all.

Redirect examination.

By Mr. Morken:

Q. As far as dissatisfactory service, this was a surprise to me. Do I understand that you don't want to get out in the middle of the night and help Mr. Dingman unload his trucks?

[fol. 202] A. I don't like it, no.

Exam. Roberts: Has that been the usual circumstance in regard to Mr. Dingman's service?

The Witness: No. I think they kind of abuse a fellow if they thing a guy—Mr. Dingman's last load arrived at 5:30 in the morning, and the driver called me out of bed and wanted me to help unload it.

Mr. Morken: I have nothing more.

Recross examination.

By Mr. Coyne:

Q. In other words, you would rather have Mr. Dingman come between what hours?

A. Well, I would like to have him come between the hours of 8 and 5.

Mr. Coyne: That is all.

Thank you.

Exam. Roberts: You are excused.

(Witness excused.)

Mr. Hetland: I will call Mr. Stevenson.

PAUL STEVENSON was sworn and testified as follows:

Direct examination.

By Mr. Hetland:

Q. Will you state your name and your residence, please?
A. Paul Stevenson, Moberly, Missouri.
Q. What business are you engaged in?
[fol. 203] A. Retail monument business.
Q. And for how many years?
A. Since September, 1912.
Q. How many retail outlets do you have?
A. Four.
Q. That is in the neighboring area?
A. Right.
Q. You have heard the testimony of the prior witnesses with regard to the application here under consideration and the service which Mr. Schaffer wants to make available to you?
A. Yes, sir.
Q. And you have in the past used rail shipments for Barre, Vermont, granite almost exclusively?
A. Yes, sir, exclusively.

Exam. Roberts: This will be identified as Exhibit No. 9.

(Applicant's exhibit No. 9, Witness Stevenson, was marked for identification.)

By Mr. Hetland:

Q. I show you Applicant's exhibit No. 9. Will you tell me what that exhibit shows?
A. It is a listing of our L.C.L. shipments from Barre, Vermont, to Moberly for the year 1951, the date shipped,

the date delivered, the weight of each shipment, and the number of days for delivery.

Q. You have the bills from which this information was taken with you and in your possession now?

[fol. 204] A. That is right.

Mr. Hetland: We offer Applicant's exhibit No. 9.

Mr. Cronon: I wonder if you would withhold the ruling on that.

Exam. Roberts: All right.

By Mr. Hetland:

Q. What rail facilities are available to you?

A. The Wabash Railroad Company and a branch line of the Missouri and Texas.

Q. You are a terminal point?

A. Right.

Q. And you consider the rail service to be a rather good service because of that fact?

A. Yes, sir.

Q. Do you also use pool car shipments, rail pool car shipments?

A. With other dealers, yes, sir.

Q. How many pool car shipments do you have a year?

A. I think last year we had two, possibly three. I have no record of that. That is to the firm to whom it was consigned with a stopover at Moberly for me to unload.

Q. In other words, you are in a Kansas City pool?

A. Or a local neighboring dealer pool.

Q. You have heard the testimony of prior witnesses on damage, breakage, and spoilage, and is your experience with rail shipments approximately the same?

A. From the damagewise standpoint, we have had very little trouble.

[fol. 205] Q. Do you have a need for the proposed motor vehicle service from Barre, Vermont?

A. I think so, sir.

Q. Would it bring added advantages to you in your business?

A. I believe it would from the experience we have had from other granite shipping centers.

Q. Would you explain that a little more fully?

A. We receive shipments from three major points of operation, the northwest, Georgia, and Vermont. We receive practically all of our shipments from the northwest and from the south by truck, and we find it very advantageous.

Q. Would you consider yourself a bit or small dealer?

A. Let's say medium.

Q. Medium?

A. Small, I think might come nearer fitting the picture.

Q. And is your situation representative of the other retail dealers in Missouri?

Mr. Coyne: That is objected to as being incompetent by this witness.

Exam. Roberts: I will sustain the objection.

By Mr. Hetland:

Q. What do you consider the biggest transportation problem with the existing transportation facilities from Barre, Vermont, to Missouri?

A. In years past, we have used a lot of Barre granite because of the economic structure. The price of it has been [fol. 206] necessary for us to reduce our inventory. If this service were made available to us, we would have a quicker turnover and could replenish more often.

Q. There is an advantage in speed and more frequent delivery?

A. That is right.

Q. Would you purchase more Barre, Vermont, granite if you had such service?

A. There is that possibility.

Q. Do you experience any delay in your pool car shipments?

A. No, sir.

Q. Is there any delay in the pooling itself?

A. Well——

Q. Forming up the pool.

A. No. Ordinarily, that is done with just two or three local concerns, the manufacturers see that it gets together, the point is that the present conditions, it delays a lot of times in getting enough for a pool car.

Q. And approximately how long would that delay be?

A. For example, we had a shipment this year, I mean it arrived in March, and it was started along in October or November.

Q. And you experience the same seasonal rushes, the Memorial Day rush?

A. Oh, yes.

Q. And it would be an advantage to you to have faster more certain service at those peak periods?

[fol. 207] A. Right.

Q. Assuming that authority for Granite City Transfer to transport granite from Barre, Vermont, is established, has Granite City or Mr. Dingman ever contacted you at any time during the year 1952?

A. No, sir.

Q. Would you have used such a service if you had known about it?

A. There is a possibility that we would have.

Mr. Morken: That is all.

Cross examination.

By Mr. Coyne:

Q. Are you willing to use such service now?

A. If it is efficient and satisfactory.

Q. And if a service by Mr. Dingman, doing business as Granite City Transfer, performs the same service and is efficient in doing it, that will satisfy your requirements from Barre, won't it?

A. Well, if we get the service we want.

Q. Now, leaving that for a moment, does exhibit 9 represent the total amount of shipments received by you in 1951?

A. l.c.l.

Q. Did you get any rull carloads?

A. No, sir.

Q. Then this is your total?

A. No, sir. As I explained a moment ago, we had some pool carloads with other dealers.

[fol. 208] Q. And those, I think you testified, came without delay?

A. That is right.

Q. Now, has the applicant represented to you that he will transport individual shipments on your behalf from Barre to your place of business?

A. I will have to go back to the beginning of this thing, if I make that statement, to clarify it.

I believe, Mr. Examiner, that is what I should do.

About a year ago a salesman who sells not only for the northwest but for a firm in Vermont talked to me about the possibility of getting service from Vermont to the midwest, and asked that I write a letter in that regard, and I did.

Exam. Roberts: You speak of motor carrier service?

The Witness: That is right.

By Mr. Coyne:

Q. Do you get granite from St. Cloud?

A. Yes, sir.

Q. Have you had Dingman bring loads into you?

A. I have made inquiries, and they advised me that we have no direct service to Moberly, Missouri. We have had some come in by motor transfer, but I guess that is what you call dry freight picked up by someone in St. Cloud, brought down to the Twin Cities, and then another company into Kansas City, and then another into Moberly.

Exam. Roberts: More than one motor carrier carried it?

The Witness: Oh, yes, a very high rate.

[fol. 209] Mr. Coyne: That is all.

Mr. Cronon: May I see those freight bills, please?

Cross examination.

By Mr. Cronon:

Q. Now, your delivery date is the date that the freight bill bears, isn't that right?

A. Yes, sir.

Q. So that your exhibit 9, the column headed "Date Delivered" represents the date that the local freight agent of the Wabash made out the freight bill which you paid?

A. That is right.

Q. It doesn't necessarily represent the date of delivery?

A. This column represents that, yes.

Q. The "Date Delivered" column?

A. That is right.

Q. And is that date shown under "Date Delivered" taken from the freight bill?

A. Yes.

Q. Well, you made up this exhibit.

A. I took this here as the waybill date, as the date of shipment, and I took this as the date of delivery, even though, you see, it wasn't actually delivered at our plant until the 9th, twenty-seven days later.

Q. Well, the date you just referred to, that is the date that the Wasbash Railroad stamped the waybill paid?

A. That is right.

[fol. 210] Q. That isn't the date that the shipment reached Moberly?

A. The date.

Q. That is the date the freight bill was made out, isn't that right?

A. Yes, I presume so. I don't know their technique.

Q. You don't actually have any document that shows the date that the shipment reached Moberly on the waybill?

A. Only from that expense bill.

Q. I notice on your exhibit 9 that several of the shipments were received during the wintertime. Do you make it a point to put in a stock of memoraisl during the winter?

A. I hardly believe that statement will stand, December, February, May, June, July, September and October.

Q. Well, I see some shipments that were received during November and December and January and March.

A. Four?

Q. Yes.

A. Five.

Q. Why do you get shipments in during the winter if you don't need them until Memorial Day?

A. We have a plant that we like to keep in operation. We like to do our lettering and engraving.

Q. So that you will have them ready for the spring season?

A. That is right, sir.

Q. Well, then, it is a practical thing for you to put in a [fol. 211] supply of memorials during the winter, so that you will be ready for the rush?

A. We carry a stock at all times.

Mr. Cronon: That is all.

Redirect examination.

By Mr. Morken:

Q. Mr. Coyne brought up this matter of knowing of Dingman from St. Cloud, and you said you wrote to shippers in St. Cloud seeking truck service?

A. I talked to them personally.

Q. Whom did you talk to?

A. The Royal Granite Company, Cold Spring Granite Company.

Exam. Roberts: Now, Mr. Morken, you are not interested in any operations out of St. Cloud.

Mr. Morken: No, but I am certainly interested in how Mr. Dingman is holding out this service.

Exam. Roberts: The service that Mr. Dingman is testifying to is service from Barre, Vermont, and St. Cloud is not an issue in this application today.

Mr. Morken: If I may have one more question, and then I will pursue it no further.

By Mr. Morken:

Q. The gentlemen at Royal Granite and Cold Springs said that they could not give you truck service from St. Cloud to Moberly, Missouri?

A. Through truck service.

Mr. Morken: I have nothing further.

[fol. 212] Exam. Roberts: Recross?

Recross examination.

By Mr. Coyne:

Q. Whom did you talk to there, and when did they tell you that?

Exam. Roberts: If it is anything out of Barre, I will listen, but otherwise——

Mr. Coyne: Nothing further.

Mr. Morken: Thank you, Mr. Stevenson.

Exam. Roberts: You are excused.

(Witness excused.)

Mr. Morken: I will call Mr. Hunstad.

ED HUNSTAD was sworn and testified as follows:

Direct examination.

By Mr. Hetland:

Q. Will you state your name?

A. Ed Hunstad.

Q. Where do you live?

A. Aberdeen, South Dakota.

Q. And what business?

A. Retail monument business.

Q. What is the name of your company?

A. Aberdeen Monument Company.

Q. How many years' experience do you have in the business?

A. I have been in the business as a retail merchant myself for seven years, but I have worked in the business for fifteen.

[fol. 213] Q. You have been in the Aberdeen Monument Company seven years?

A. That is correct.

Q. You have heard the testimony of the prior witnesses here today?

A. I have.

Q. And you are familiar with the application and the proposed service to be offered by Mr. Schaffer?

A. Yes.

Q. Do you feel that you have a real need for such service?

A. I do.

Q. And what is that need?

A. Being termed a small dealer and being unable to stock carload shipments from Barre, Vermont, and also because it is not practical for me to pool cars with any of the dealers in my vicinity that handle Barre granite, because of our great distances between dealerships, we must ship in smaller than carload lots. I find that truck service would help my business considerably.

Q. You have had some l.c.l. shipments this year from Barre, Vermont, to Aberdeen, South Dakota?

A. Yes, I have.

Q. And what was the average time for delivery?

A. I haven't that information with me, except I took along, I guess, the last shipment that came in, and I believe that is seventeen days.

[fol. 214] Q. Would you consider that to be representative of the time?

A. I would say that was a very good representation. I believe that it was seldom that we have gotten it any sooner than that.

Q. You have heard the testimony of the other witnesses with regard to damage and breakage and stains and spoilage of granite by rail shipment, and has your experience been approximately the same as the other witnesses?

A. Our experience hasn't been good. We found that in l.c.l. shipments many of the crates are broken. When a crate is broken, even though the monument or marker has not been damaged, it still is hard to handle that crate, it involves more time, and I have one specific case here where we did have a loss on account of a monument damaged.

Q. Would you consider a speedier more frequent service to be a business advantage to you?

A. Yes.

Q. Do you believe that morot vehicle service would give you more speedy and more frequent service?

A. I feel that way.

Q. Has Mr. Dingman or Granite City Transfer ever solicited your business from Vermont to Aberdeen, South Dakota?

A. No, they haven't.
Q. Did you know that such a service was available?
A. No, I didn't. I inquired from the Rock of Ages Cor-
oration this past spring for a service that would bring
fol. 215] the granite to our place of business in less time
nd in better shape, and I was informed by the Rock of
ges people that there was no such service available.
Q. Do you deal primarily with finished or unfinished
ieces of granite?
A. Finished except for lettering.
Q. If a piece of granite is completely damaged, will you
ttempt to repair it yourself?
A. I have no way of repairing it.
Q. It would be necessary for you to replace any piece
f granite damaged in shipment?
A. Yes.

Mr. Hetland: Your witness.

Cross examination.

By Mr. Coyne:

Q. What would your annual volume be on Barre?
A. I would say—tonnage?
Q. Yes.
A. Twenty-five or thirty thousand pounds.
Q. Has the applicant outlined to you how he is going
o serve you?
A. I am somewhat familiar. Shall I state it that way?
Q. Yes.
A. With their operation. We are only one hundred
niles from Milbank, so I was quite familiar with the
perations of both Hunter and the Dakota Granite Com-
pany, and through that knowledge I derived my idea of
fol. 216] what kind of service we might be able to get
rom Barre, Vermont.
Q. But now has this applicant, Mr. Schaffer, repre-
ented to you that if you called him up over the telephone
nd told him that you had six hundred pounds in a ship-
nent of granite, that you wanted to get from Barre, Ver-
nont, that he would go to Barre and get it *to* for you and
ring it back?

A. He certainly didn't.

Q. Then the service that you expect to get from him if he is granted this authority, is to participate in split delivery of truckload shipments t at will be pre-arranged by the shipping department of the quarry where the granite comes from, is that correct?

A. Partially so, yes.

Q. In what respect wouldn't it be right?

A. I presume that in cases where we would, we will say that our orders for a certain time had accumulated to ten thousand pounds, I think it would be easy to take it to whatever truck concern was operating, and I believe that they would get enough tonnage in that vicinity that I could get pretty speedy service.

Q. So that if you permitted your own merchandise to accumulate to ten thousand pounds, that you would contact a trucker to make a full truckload and get speed service?

A. That is right.

[fol. 217] Q. About how many months would it take you to accumulate your own orders until you get ten thousand pounds?

A. It might be overnight, it might be quite a while.

Q. Your past experience has been about twenty-thousand pounds a year?

A. That is right, but I might sell it all in one month.

Q. Oh, I see. If that is done and you are able to get such ten thousand pound accumulation of orders, are you willing to use whatever carrier might be available, providing they give you adequate service?

A. The best service.

Q. And you have no complaint against the services of Granite City Transfer, do you?

A. I haven't anything to base it on.

Q. And if they are authorized by the I. C. C. and render a service comparable to what the applicant proposes and you use them, that would fulfill then your needs?

A. If their service was all right.

Mr. Coyne: That is all.

Thank you.

Redirect examination.

By Mr. Hetland:

Q. Do the dealers specify the type of transportation which will carry their granite from Vermont to South Dakota?

A. We usually have to specify ours by the fastest and cheapest route.

[fol. 218] Mr. Hetland: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Mr. Hetland: I will call Mr. Farrell.

RICHARD C. FARRELL was sworn, and testified as follows:

Direct examination.

By Mr. Hetland:

Q. State your name.

A. Richard C. Farrell.

Q. Where do you live?

A. Loves Park, Illinois.

Q. In what business are you engaged?

A. We are engaged in the retail monument business.

Q. Where is your business located?

A. Our business is located in Loves Park, and, that is, for your information, a suburb of Rockford, Illinois.

Q. How long have you been engaged in the retail monument business?

A. Approximately six years.;

Q. You have heard the testimony of the other witnesses here today and you are familiar with the proposed service to be supplied by Mr. Schaffer, should his application be granted?

A. I am.

Q. What present transportation service do you have [fol. 219] available from Barre, Vermont, to Rockford, Illinois?

A. The only transportation service at the present time is rail from Barre, Vermont, to Rockford.

Q. You do purchase granite at Barre, Vermont?

A. That is right.

Q. And approximately how many pounds?

A. I would say about twenty to twenty-five thousand pounds a year.

Q. How do you receive the shipments?

A. Our business is peculiar from most of the other gentlemen, inasmuch as we are dealing with custom designed monuments, and every piece that has been ordered from Barre, Vermont, has been custom designed, and when it is shipped to us it is ready to erect in the cemetery with no handling, and because of that fact we receive maybe one, two or three shipments from Barre a month.

Q. Now, out of Barre how do those shipments come?

A. We have never bought a piece of granite in carload lots yet from any source. They all come l.c.l.

Q. And you don't have any pool car arrangement?

A. I believe some did come in in pool car. I don't frankly know.

Q. Where would be your terminal point on a pool car?

A. I believe it would be Proviso, Illinois, or Chicago, if I am not mistaken.

[fol. 220] Q. And L.C.L. from then on?

A. Yes.

Exam. Roberts: You move into your plant by motor carrier from these break-bulk points?

The Witness: All of our freight comes into the railroad station, and the only way we can get it to our plant is by motor carrier.

By Mr. Hetland:

Q. Do you use your own trucks, or do you hire the motor carrier service from the delivery points?

A. I would like to bring this out, that it has a very direct effect upon our business, whereas the gentleman from the railroad pointed out that the date that is on our ticket as the freight arriving, that does not necessarily constitute

delivery to us because here is what has happened. We have had granite come in that had a rate on it that entitled us to delivery to our door and when they inquired as to when that delivery was going to be made, the railroad told us that it would be made at their convenience, which is only natura-. However, sometimes their convenience turns out to be a week or ten days subsequently. What we have actually done, even though our rate is such that we are entitled to free delivery, if we were under the impression that the granite was at the railroad station, we took our truck down there and took it out, and because of the nature of the work that we are doing, if the monument was delivered to the railroad station and unloaded, we were able to get it into the [fol. 221] cemetery that same day.

Q. What has been your experience on the time in transit from Barre, Vermont, to Rockford, Illinois, by L.C.L. rail?

A. I must plead ignorance, and in this particular case, as far as when the railroad got it, and when we received it, I do know this that the bill of lading that accompanied our invoice, which was stamped as being received at the Barre Guild, was perhaps August 7th. There have been many times when we actually got our hands on the granite a month after that.

Q. In other words, you have experienced one month in transit from the time it reaches the Barre Guild Consolidation point to the time of delivery in Rockford, Illinois, at the rail station?

A. That is right. I would like to say that I am not condemning that particular phase of this matter, the railroads in this matter, although I know all we are interested in doing is to get our hands on the merchandise, and it has been from three to five weeks before we have been able to place our hands on that monument.

Q. What has been your experience with regard to damage and stains in rail shipments or l/c.l. shipments?

A. We have a claim at the present time, which, I believe, is about four weeks old, from Barre, Vermont. We have had unusual experiences with relationships to recent oil. In fact, in our yard at the present time, we have markers [fol. 222] that have not yet been uncrated that have grease on them so thick that we would have to scrape them off

with a putty knife. We have made a sincere effort to get to the bottom of it. When the quarry representative was out to our shop we instructed him to go back to the quarry and see if that could have been done at the quarry in loading, and frankly, it does seem that because of the locality we are in, which is basically a manufacturing center, that granite happened to be laying underneath the piece of machinery where the grease or oil had dropped onti it, and we have experienced considerable trouble in relationship to that thing.

Q. And you have experienced cracking approximately the same as the other witnesses?

A. Yes. There was a time when we had filled what I thought was so many claims over a short period of time, and right as at the present time we have a marker that is at the Northwestern Depot in Rockford, the value of which was six dollars and fifty-cents, and rather than go to the trouble of filing a claim, we just wrote it off.

Q. You stated before that most of your work is custom designed? Suppose you sustain a damage to that either by cracking or staining, do you repear it yourself, or is it necessary to replace it?

A. It is necessary to replace the complete finished product.

Q. And you can only obtain that from Barre, Vermont?

A. Well, naturally.

[fol. 223] Q. And it would take you the same length of time as a new order?

A. Yes, in our particular case a little bit longer, because it has to be fabricated in their factory.

Q. Do you feel that there is a need for the service proposed by Mr. Schaffer in the application under consideration?

A. I very definitely feel that in our particular case there is a need for motor transportation, particularly in our location and the things we have to contend with.

Exam. Roberts: From Barre, Vermont?

The Witness: That is correct.

Exam. Roberts: You don't obtain anything from Milbank, South Dakota?

The Witness: No, we do not.

By Mr. Hetland:

Q. Would it be a business advantage to you to have speedier more frequent service?

A. It certainly would, and, of course, I won't elaborate on this, but we are working on a condition that is definitely different than most monument companies. In fact, our competition thrives on that very thing, their advertising, their play-up as being able to deliver, and they know that we have had trouble in getting delivery, and the present Memorial Day advertisements were worded in that way, that we can give you immediate delivery.

Q. Do you feel that the existing rail transportation is the primary cause for your inability to——

Mr. Cronon: That is objected to as being leading.

[fol. 224] Exam. Roberts: Objection overruled.

A. If you are speaking specifically of Barre, Vermont, to our location, I would say that was because of railroad transportation.

By Mr. Hetland:

Q. Do the dealers generaly specify the type of transportation from Barre, Vermont, to Rockford, Illinois?

A. We have in our records letters that we have——.

Exam. Roberts: Let's be a little more specific.

Mr. Cronon: Before he answers, I would like to know what dealers counsel refers to.

Mr. Hetland: I refer now to one dealer, himself.

(Question read.)

By Mr. Hetland:

Q. Do you as a dealer——

A. We have directed them to send our freight in a way they see fit to give us the speediest delivery.

Q. Have you ever heard of Granite City Transportation Company?

A. No, I have not.

Q. Have you ever been solicited by Mr. Dingman with reference to motor transportation from Barre, Vermont, to Rockford, Illinois?

A. No, I haven't.

Mr. Hetland: That is all.

Cross examination.

By Mr. Coyne:

Q. You say you receive one or two to three shipments a month?

[fol. 225] A. From Barre.

Q. Then if you had available to you one trucking company, such as Granite City Transfer, who will transport those shipments to you direct by truck without interchange or interlining of any type, that would fulfill your requirements would it not?

A. Not necessarily. I feel that I am taking your question just as you worded it. If we had one trucking company available that wouldn't satisfied our needs, is that what you said?

Q. Yes.

A. I don't believe so. I don't believe that one trucking company could possibly carry on the job.

Q. Well, that is not my question. If the Granite City Transfer Company is willing to transport your monument from Barre, Vermont, to your place of business in Rockford in five to six days time in transit, wouldn't that fulfill your transportation requirements?

A. That would, and, of course, you are basing your question on the assumption that it could be done.

Mr. Coyne: That is all.

Thank you.

Cross examination.

By Mr. Cronon:

Q. Mr. Farrell, when you estimate the time in transit on a shipment from Barre to Loves Park, Illinois, do you take

the date on the bill of lading as the date that the shipment actually left Barre?

[fol. 226] A. Actually, I tried to figure that out. I have some freight bills with me. I imagine that the date on the bill of lading is such that that granite was ready to be picked up. I can't tell by our freight bills just exactly when that left. All I know is how long it took.

Q. Let's refer to that marker that you say sat in the depot at Rockford, Illinois.

A. That is correct.

Q. And Rockford, Illinois, is served by the Chicago Northwestern Railway?

A. We do receive granite from the Chicago Northwestern, the Illinois Central, and the C. B. & Q.

Q. From Barre, Vermont?

A. No, I didn't mean that.

Q. This particular shipment was from Barre?

A. That is right, and that varies, too, as we get our granite from Barre both by the Northwestern and the Illinois Central.

Q. This shipment was from Barre that sat in the depot at Rockford?

A. That is right.

Q. And it sat in the Northwestern Depot?

A. That is correct.

Q. Do you know what date it was that that shipment arrived in the depot at Rockford?

A. No, I do not.

[fol. 227] Q. You don't remember, is that correct?

A. I don't know. We have a very sad experience relative to this. I can't answer.

Mr. Cronon: I move that his answer there be stricken.

Exam. Roberts: It will remain.

By Mr. Cronon:

Q. Now, Mr. Farrell, you don't know the date that the shipment arrived in the Northwestern depot in Rockford?

A. No.

Q. Do you remember the exact date when it was delivered to your place of business?

A. Actually, if I recall correctly, as it turned out, the shipment was never delivered to our place of business.

Q. Where was it delivered?

A. We went our truck down and finally disposed of the material.

Q. What data was it that you sent your truck down to the Northwestern Depot?

A. You mean how long after the arrival?

Q. What date, month, day and year?

A. I don't remember.

Q. Did you make a compliaint to the Northwestern Railway about the delay in delivery of that shipment?

A. We have many times discussed that with them as to how long it would take.

Exam. Roberts: Just answer the question.

The Witness: Yes.

[fol. 228] By Mr. Cronon:

Q. And where did you file it?

A. It was verbal. I talked to the gentleman in charge of the freight shipments.

Q. At Rockford, Illinois?

A. Yes.

Q. Do you have any idea what month of the year that was?

A. It is physically impossible for me to recall.

Q. For something that seems to have gotten under your skin so much, you don't seem to have very much specific information about it.

A. Actually, what has happened in the meantime is that we never now have the railroad deliver the granite to our door. We always pick it up, and that has saved us a lot of trouble. It has become relatively unimportant to us. They mail us a card, and we send our men down and get the granite so it has worked out very nicely.

Q. Do you get an allowance for making the pickup?

A. Yes, if the freight rate was such that we were supposed to get delivery, they make the allowance to come down and pick it up.

Q. If this application is granted do you propose to ship your two or three pieces of granite a month via the applicant instead of via the railroad?

A. Well, actualy, I do believe that in our setup there we would.

[fol. 229] Q. In other words, all of your business will be transferred to the applicant, is that correct?

A. It is only correct to this point that I do believe that the railroad has rendered us a service, whereas most of the time we are very dependent on the delivery, if we do not need it in six days, there is no reason to take it away from the railroad.

Q. I will ask my question again. If the application is granted do you propose to transfer all of your business to the applicant?

A. No.

Q. Why will you leave some business to the railroad?

A. When we order stone, it is immaterial to us then on some orders how soon we get it, and I do know this, that there have been times when we were able to pick up the granite at the railroad at our convenience, and we went down there any time of the day.

Q. How long have you been in business, in the monument business, in Loves Park?

A. About six years.

Q. And has your business prospered?

A. Yes, sir.

Mr. Cronon: That is all.

Mr. Coyne: That is all.

Mr. Morken: No further questions.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: Off the record.

[fol. 230] (Discussion off the record.)

Exam. Roberts: On the record.

Mr. Morken: The applicant rests provisionally at this time for the purpose of making this motion.

The motion is that this hearing be continued to a further hearing in Montpelier, Vermont. A similar motion was made by the railroads, to which I obj cted, and it was denied.

If that motion is denied, I make a motion on my own behalf at this time for such a hearing, and the reasons for the motion are these: I plead surprise in connection with the testimony of the Witness McBride. The Examiner sustained objections to his testifying as to certain concerns, one of which was available in Minneapolis yesterday, and I could have had present at the haring, but thinking that the Witness McBride could supply their testimony, I did not see fit to call those witnesses. At the further hearing in Vermont it is our intention to produce several manufacturer shippers who are located in the Barre-Montpelier, Vermont, area. It will not be cumulative testimony in that we have had Witness McBride testifying about the Barre Association and the Guild, and this testimony will deal with individual companies and their needs for the service.

Mr. Coyne: For the record, I would like to show that the intervenor, William Dingman, doing business as Granite City Transfer, objects to any such further hearing. The applicant had due notice of this hearing today and should [fol. 231] be fully acquainted with the Commission's Rules of Procedure and Practice.

If he permitted witness who were in his office yesterday and whom he even admits he talked with this morning to go home to Vermont, I think it is just his misfortune.

We object to it. We maintain we would be prejudiced to a great extent. We also make claim that to allow such would establish an unwise precedent in that it would permit an applicant to come to a hearing prepared just so-so, and then upon finding certain opposition, ask for a continuance to better prepare himself.

So for the basic principle involved, in addition to the first reason, I formally object on the record.

Exam. Roberts: In view of the telegram read into the

record by Mr. Morken earlier today, the Examiner is forced to deny his motion for a further hearing at this time, which is, of course, without prejudice of the applicant requesting a further hearing with the Commission.

Mr. Hetland: You haven't made a ruling on Exhibit 9.

Exam. Roberts: Is there any objection to exhibit 9?

Mr. Cronon: I object as there is no proper foundation for it in that the documents that were shown to me by Mr. Stevenson to support it do not indicate the actual date of delivery at Moberly, Missouri.

Exam. Roberts: Is that an objection you are making?

[fol. 232] Mr. Cronon: That is an objection.

Exam. Roberts: I will receive the exhibit over the objection.

(Application's exhibit No. 9, Witness Stevenson, was received in evidence.)

Exam. Roberts: Let's take a five-minute recess.

(Short recess.)

Exam. Roberts: We will come to order.

Mr. Coyne: I will call Mr. Dingman.

WILLIAM M. DINGMAN was sworn, and testified as follows.

Direct examination.

By Mr. Coyne:

Q. Will you state your full name?

A. William M. Dingman.

Q. Where are you from?

A. St. Cloud, Minnesota.

Q. What is your occupation?

A. Doing business as the Granite City Transfer.

Q. What is the business of Granite City Transfer?

A. Transportation of granite, finished and rough, and supplies used in the manufacturing and fabricating of granite, supplies and machinery.

Exam. Roberts: These will be marked as Intervenor's exhibits No. 11 and 11 for identification.

(Intervenor's exhibits Nos. 10 and 11, Witness Dingman, were marked for identification.)

[fol. 233] By Mr. Coyne:

Q. Now, Mr. Dingman, I show you what has been marked as exhibit 10 and exhibit No. 11 and ask you if those two exhibits correctly define the authority that you presently hold from the Interstate Commerce Commission?

A. Yes, sir.

Exam. Roberts: These will be marked as exhibits No.s 12 and 13.

(Intervenor's exhibits Nos. 12 and 13, Witness Dingman, were marked for identification.)

By Mr. Coyne:

Q. Now, I show you a map which the reporter has marked as exhibit No. 12, and I will ask you to state whether or not that map correctly portrays the states which you are authorized to serve from Vermont on the transportation of granite insofar as they are affected by this application.

A. Yes.

Q. Now, I will show you a comparable map which I, as your counsel, have prepared and which the reporter has marked as exhibit No. 13, and ask you if that properly portrays the states served by Granite City Transfer from Grant County, South Dakota, insofar as affected by this applicant's application.

A. Yes, sir.

Q. Now, Mr. Dingman, what equipment does the Granite City Transfer company operate?

[fol. 234] A. I have five units which have a maximum capacity of approximately twenty-five thousand pounds, and I have five pieces of equipment that have a maximum capacity of approximately thirty-two to thirty-three thousand pounds.

Q. What type of motor power do you have on those units?

A. Well, they are all on the larger pieces of equipment,

the engine displace is from four hundred and five cubic inches up to five hundred seventy-five cubic inches.

Q. And what make are they?

A. Internationals, Federals and Diamond T's.

Q. What type of trailers do you have?

A. Single axle and tandem axle.

Q. And the single axle hold twenty-five thousand pounds?

A. Yes, sir.

Q. And the tendem up to thirty-two?

A. Up to thirty-two or thirty-three thousand.

Q. Is all of that equipment in good mechanical condition?

A. Yes.

Q. What experience have you had in the transporting of granite?

A. Hauling since 1941.

Q. Do you haul any other commodities?

A. We haul all of the machinery and supplies used in the manufacturing and fabricating of granite.

Q. And anything else, is there any other commodity?

A. No, that is all.

[fol. 235] Q. Are you drivers experienced in the handling of granite and granite products?

A. Yes, sir.

Q. Referring to the portion of the present application that seeks authority from Grant County, South Dakota, to eastern states, do you presently operate into the States of Vermont, Massachusetts, Connecticut, Maryland, and the District of Columbia?

A. Yes.

Q. Referring now to the portion of this instant application that seeks authority from Vermont to certain midwest states, do you presently hold yourself out and actually operate from Vermont to the States of Wisconsin, Illinois, Oklahoma, Nebraska, South Dakota, Minnesota, Iowa, and Kansas?

A. Yes, sir.

Exam. Roberts: Under what authority is that?

By Mr. Coyne:

Q. Now, the authority that you perform this transportation from Vermont back to these midwest states that we have named arises under what authority issued by the Interstate Commerce Commission? I refer to Exhibit 11, and ask you if the authority is stated there.

A. Yes.

Exam. Roberts: Just a minute.

Now, will you point out Exhibit 11?

Mr. Coyne: Now, Mr. Examiner, at this time I would [fol. 236] like to withdraw Exhibit No. 12, which is a map prepared, in that I prepared it incorrectly, apparently relying on some language——

By Mr. Coyne:

Q. The delineation on Exhibit No. 12 does not accurately portray your existing authority to Vermont?

A. Yes.

Q. Now, Exhibit 13 does accurately portray your authority from Grant County, South Dakota, to the states in the east, all as authorized by the authority granted in Exhibit No. 10, which is Sub 3?

A. Correct.

Q. Now, going back to your equipment, is this fully occupied at the present time?

A. No, it has not been since Decoration Day.

Q. Does your equipment ordinarily, one hundred per cent of it, have occupancy during the year in the transportation of this commodity?

A. No, it is not.

Q. To what extent do you ordinarily utilize your equipment?

A. Just during the sixty days before Decoration Day. We use all ten pieces of equipment then. Prior to that we use around seven or eight pieces.

Q. And if the need should arise for more equipment are you in a position to supplement your fleet of trucks?

A. Yes, sir.

Q. How would you supplement them?

[fol. 237] A. Either purchase or lease. I have trucks that are available to lease.

Q. Is the Granite City truck line financially able to purchase new equipment, if that is required?

A. Yes, sir.

Q. Now, on the movements from Grant County, South Dakota, to points in the states of Vermont, Massachusetts, Connecticut, Maryland, and the District of Columbia what time in transit would you offer shippers?

A. Oh, five to six days.

Q. And that has been your experience in the past over such a distance?

A. Yes, sir.

Q. Now, how far are you located from Grant County, South Dakota?

A. One hundred forty miles.

Q. In your eleven years of experience in transporting granite what amount of notice have you received before equipment is needed by the shipper?

A. Oh, they usually call and give us anywheres from two to five or six days' notice.

Q. And in the past have you operated from Grant County, South Dakota, to points in these eastern state for which the applicant seeks authority?

A. Yes, sir.

[fol. 238] Q. Have you had any complaints from the shippers that you have served in Grant County, South Dakota, on your service?

A. No.

Q. Are you willing to perform the service requested by Witness Stengel from Grant County, South Dakota, to points in the states which you are authorized in the east?

A. We have rendered that service to him up until the last eighteen months.

Q. Was there any complaint to you from his company during that period?

A. No.

Q. Why have you not rendered such service during the past eighteen months?

A. His tariff rate is considerably lower than mine.

Q. Has any other reason been put forth to you?

A. That is the only one.

Q. Aside from the rate differential, do you still hold yourself out to haul any and all shipments for Stengel?

A. We are still hauling for Hunter and Stengel.

Q. Who is Hunter?

A. He is the other granite concern in Milbank.

Q. In other words, you are hauling from Milbank now?

A. That is right.

Q. Has there been any complaint from him as to your service?

A. No.

[fol. 239] Q. Now, on your return movement from Vermont to points in Grant County, South Dakota, would you be able to serve Stengel?

A. Yes.

Q. What time in transit would you provide him on return?

A. About six days.

Q. Six days.

A. Yes.

Q. Now, on movements from Vermont to points in Minnesota to which you are authorized, what time in transit can you give?

A. About five days.

Mr. Morken: We are referring again, now, to the movements from Vermont to Minnesota, that last question was Vermont to Minnesota?

Mr. Coyne: Yes.

Mr. Morken: I will object to it as being no authority, none evidenced in the record, and if such hauls have been made, they are illegal, and this carrier has shown no authority where he can haul from Vermont back.

Exam. Roberts: Does the intervenor have authority to operate out of Vermont?

Off the record.

(Discussion off the record.)

Exam. Roberts: On the record.

You have no other operating authority than that which you submitted here as Exhibits Nos. 10 and 11, have you?

[fol. 240] The Witness: No.

Exam. Roberts: They are the only certificates that have been issued to you by the Interstate Commerce Commission?

The Witness: Those are the two last ones.

Exam. Roberts: That is the only operating authority that you now have from the Interstate Commerce Commission, is that right?

The Witness: That is right, as far as I know. I went into the Interstate Commerce Commission office the day before yesterday and told them that I wanted to be sure that I had my right authority with me, and Mr. Hendrick over there checked over the tariff sheet, and he said, "Yes, this agrees with what you have on the record."

Exam. Roberts: You ought to know what certificates you have.

The Witness: We have corrected this last one three times.

Exam. Roberts: That is on the one dated December 6, 1951?

The Witness: Yes.

Exam. Roberts: I will sustain the object, Mr. Morken.

Mr. Morken: Following that objection to sustain, I now move to strike from this record all of Mr. Coyne's cross-examination and all testimony that was responsive to those questions by the witnesses that resulted in Mr. Dingman's proposed ability or proffered service from Vermont back to the area in question.

Exam. Roberts: I will overrule your motion to strike. [fol. 241] The record will stand as made.

Mr. Coyne: Subject to our ability to prove the service.

Mr. Morken: I think I am entitled to know what I am going to meet, and if you have anything and if you have any interest in this proceeding, as far as Vermont is concerned, I ask you to state what your position is now and what your authority is.

Exam. Roberts: I think the certificates that he has offered as Exhibits No. 10 and 11 speak for themselves. As far as I can see, there is no authority in there, and Mr. Dingman admitted that there was none in there.

These exhibits show no authority from Vermont, do they?

The Witness: No.

By Mr. Coyne:

Q. Now, Mr. Dingman, you are a common carrier and your operation is out of Grant County, South Dakota, is that correct?

A. That is correct.

Q. How will the granting of this application, if it is granted to the applicant, affect your services?

A. Well, it will curtail my services the same as the other authority.

Q. What effect was there upon you when his last authority was granted?

A. I lost some of the business due to the difference in rates.

Mr. Morken: I object to that answer as being self-serving and a conclusion on the part of this witness, and once more [fol. 242] it is contrary to the facts that have been in this record.

Exam. Roberts: Objection overruled. The answer may stand.

By Mr. Coyne:

Q. And if this application is granted and the applicant is authorized to transport additional volume out of Grant County, South Dakota, to additional points in the east, will that curtail your service from that origin point in the future?

A. Yes, sir.

Q. Are you generally familiar with the amount of production in Grant County, South Dakota?

A. Yes.

Q. Are you aware of all of the producers and manufacturers of granite in their capacity which are located in that county?

A. Yes.

Q. With that in mind, what is your opinion in consideration of their production and your transportation facilities as to whether you can adequately handle and meet their

demands to points in the states of Vermont, Massachusetts, Connecticut, Maryland and the District of Columbia?

A. We took care of all of their hauling up until Mr. Schaffer got his permits. We were able to take care of it, and after he got his permits he hauled the granite from the Hunter Granite Company at that time and possibly a year and a half or two years, and we hauled from the Dakota Company, and now it has reversed itself and we are hauling from Hunter and he has the Dakota Company.

[fol. 243] Q. Do you believe with your equipment that you are capable of meeting all of the demands of all of the prospective shippers in the East?

A. Yes, sir.

Mr. Coyne: I believe that is all.

Cross-examination.

By Mr. Morken:

Q. Mr. Dingman, how many trucks a day or a week or a month or some reasonable periods, let's take the last month, the month of May, did you haul out of the Grant County area?

A. Last month?

Q. Yes.

A. I would say we possibly hauled ten loads.

Q. Now, is that an average month for you or is that a low month or a good month?

A. That is above average.

Q. And they were all for one manufacturer?

A. That is right.

Q. Now, how many loads during the same time did you haul out of the St. Cloud area?

A. We possibly hauled thirty loads.

Q. How many manufacturers do you serve in the St. Cloud-Cold Springs area?

A. We hauled from four large ones, and then there are [fol. 244] another five or six very, very small ones.

Q. All together there are about sixteen manufacturers in the area?

A. Yes.

Q. I believe you are the only carrier holding interstate authority operating out of the St. Cloud area to the surrounding states?

A. That is correct.

Q. Do you feel that your monopoly in the St. Cloud area is subsidizing this loosing operation that you are conducting out of Milbank?

A. Again, please.

Q. Is the St. Cloud area subsidizing your Milbank operations or the Grant County operations?

A. No, sir.

Q. Your Grant County operations are profitable?

A. Yes, sir.

Q. Are they less profitable there where you have competition than where you have it all to yourself in the St. Cloud area?

A. No.

Q. They are equally profitable?

A. Yes, sir.

Q. Can you tell me again in some reasonable period, and if you want to make it this year, you do so, how many loads have you hauled from Grant County to the State of Maryland?

A. I wouldn't be able to answer that question.

[fol. 245] Q. A few, maybe one or none?

A. Possibly not a full load at any time, as they were probably consolidated loads.

Q. I see. How about Washington, D. C.?

A. That would be part of the consolidated load going in there.

Q. Connecticut?

A. Same thing. Those states are all small states and dealers are very small, and they practically consist of consolidated loads, outside of the large manufacturers that we have in St. Cloud that have building jobs.

Q. I gather that your service that way is quite similar to Mr. Schaffer's in the physical operation end of it?

A. Well, I don't think we consolidated as many stops on one load, because we are able to gather from more manufacturers at one time.

Q. The service that you both render is a badly needed service by these small manufacturers, is it not?

A. Yes, sir.

Q. And it is something, as these man have testified, that is very good for their business and it is good transportation?

A. Yes, sir.

Q. Now going back, as I got to Connecticut, would your answer as to Massachusetts and Vermont be the same that since the first of the year you might not have had any straight truckloads but had some split loads in there?

[fol. 246] A. Massachusetts, we have had some full loads and in upper New York State.

Q. New York isn't involved in my questioning. Now, in Vermont and Massachusetts and Connecticut and Maryland, and the District of Columbia, can you tell me how many total loads you have had in all of them since the first of the year or some other period that is representative?

A. That would be hard for me to answer. I don't do the dispatching.

Q. You bothered to come down here for this proceeding, did you not?

A. Yes, sir.

Q. I mean that is your home up there?

A. Yes, sir.

Q. And you went to the trouble and expense of getting Mr. Coyne up here from Madison?

A. Yes, sir.

Q. Now you stated in your direct examination that if this authority is granted that the possible loss of business is doing to curtail your present service. How much business are you going to lose if we get it all?

A. You mean just the New England states?

Q. I asked you about Maryland, the District of Columbia, Massachusetts, and Vermont. I asked you how much business you were going to lose. I asked you to pick a representative period.

[fol. 247] A. We would probably lose four loads a month.

Q. Now, have you hauled four loads a month since the first of the year?

A. I think so.

Q. Your memory is getting a little sharper now.

A. It is in there pretty close.

Q. You didn't both to make a check on exactly what you were hauling?

A. No, I did not.

Q. Why not?

A. I didn't give it that much thought.

Q. Now very important to you then?

A. Yes, it is important, very important.

Q. Then, why didn't you check?

A. I was sick all day yesterday for one thing.

Q. You have had notice of the filing of this application for over a year?

A. Yes, sir.

Q. You had notice of this hearing for approximately thirty days?

A. I think so.

Q. If you have four loads a month down into these states, what is your total operation a month? How many loads do you haul all together in your over-all operation?

A. Oh, somewheres around forty.

Q. Do I understand, then, that ten percent of your total [fol. 248] business goes into these states?

A. Yes, sir.

Q. And out of Grant County, South Dakota?

A. I am talking about both St. Cloud and Grant County.

Q. You understand we are not applying for authority out of St. Cloud?

A. You asked me how many loads I was hauling.

Q. Let's get it down to the amount of tonnage that you hauled into these states out of Grant County.

A. I would say probably two loads a month out of Grant County.

Q. Two out of about forty loads a month, overall?

A. Yes, sir.

Q. Why do you think that you would lose this tonnage that you are now hauling for Hunter; he is not using Schaffer now, is he?

A. No, but they might kiss and make up to him and with his better rate that he has been having in the past, why, we would naturally lose it.

Q. You don't think that your service is superior, then in any way, then, that you could hold the business?

A. I say it is equal. He is local over there.

Q. He is locally accessible?

A. Naturally if everything was equal, with a better freight rate, they would give it to the local man.

Q. The fact that he does reside in the area, that is a [fol. 249] definite advantage in Schaffer's favor?

A. We took care of it for ten years over there.

Q. Until Mr. Schaffer got going?

A. Yes.

Q. I gather you are not afraid of competition, are you?

A. No, sir.

Q. Have you any objection if we apply for St. Cloud and that area?

Mr. Coyne: I object to that as immaterial.

Exam. Roberts: I will sustain the objection.

By Mr. Morken:

Q. You made the statement that you had sufficient money to purchase additional trucks if they were needed?

A. Yes, sir.

Q. How much money have you got?

A. I got enough to buy enough trucks to take care of all the hauling I get.

Q. Do you have a financial statement with you?

A. No, sir.

Q. Do you have a profit and loss statement?

A. No, sir.

Did you know that you were going to testify that you had enough money to expand to purchase additional equipment?

A. Well, I have been able to take care of all the hauling in that area, so I didn't see any particular a reason that that would be a question of much importance.

[fol. 250] Q. What is your operation ratio?

A. Ninety-two to one hundred total.

Q. If you lose all of these two carloads a month, figuring in the neighborhood of one fifth of your business, your operating ratio would still be less than one hundred?

A. That isn't the question if I lose that much to Mr. Schaffer and so much to somebody else and so much to somebody else, then the first thing I am sitting on a limb.

Q. You don't think that our service will hold you up as far as competing with these other gentlemen?

A. Well, my service will hold it up. What business I have lost has been a price rate, not a service rate.

Exam. Roberts: That two or four loads a month you said you would possibly lose, that would be freight out of Grant County?

The Witness: Yes.

By Mr. Morken:

Q. Two loads?

A. From two to four in that particular area.

Exam. Roberts: In Grant County?

The Witness: Yes.

By Mr. Morken:

Q. I thought that your total business was four loads a month, counting both Grant County and St. Cloud?

Exam. Roberts: We will let the record speak for itself on that. I think he said two to four loads out of Grant County.

By Mr. Morken:

Q. Do you know if you do all of Mr. Hunter's hauling out of the Grant County area?

[fol. 251] A. He hauls a considerable amount himself. He has three trucks of his own.

Q. How many trucks does it take you to take care of that, say, two loads a month out of Grant County?

A. How many trucks does it take?

Q. Yes.

A. It would take two trucks.

Q. Is the turn-around time on one truck as much as thirty days in your business?

A. No.

Q. Do you mean by that that if the two loads came at the same tome that it would take two trucks?

A. Yes.

Q. But if one dame on the first day of the month and one on the 15th day of the month, would you be able to handle it with one truck?

A. Yes.

Q. How many trucks, then, have you operating out of Grant County a month?

A. Approximately ten.

Q. Ten a month.

A. Yes.

Q. To all points?

A. Yes.

Q. Do you haul it from Grant County to St. Cloud and [fol. 252] consolidate it with other loads?

A. Yes.

Q. The point of your equipment not being fully occupied out except in the peak season, that is a rather common thing with motor carriers, is it not, in that they endeavor to maintain enough equipment to take care of the peaks as well as having equipment idle——

A. (Interrupting) We keep our trucks busy, the whole bunch of them, for better than eight months last year. Then we had a slack season of a couple of months in the season, and six weeks, now, probably.

Q. Just what do you do to advertise and hold your service out to the various people that would want to get a hold of you?

A. Most generally the monument salesmen on the road arrange for these loads and consolidate them, and make arrangements for consolidation.

Q. You are speaking of salesmen who work for the Royal Granite Company or the Cold Springs Company?

A. That is right.

Q. How do you suppos they didn't knew about your service to Missouri when it was requested by Mr. Stevenson?

A. I didn't get that authority until last fall.

Q. When last fall?

A. December.

Q. How did you get it then?

[fol. 253] A. Through a hearing.

Q. You proved a new certificate, you did not purchase one?

A. No.

Q. Have you hauled anything into Missouri?

Mr. Coyne: From where?

By Mr. Morken:

Q. Well, have you solicited any business in Missouri from Grant County?

A. Yes, we have. The manufacturers in Milbank both have our tariff which gives the tariff out of Milbank into Missouri.

Q. Has your solicitation, then, been limited to the manufacturers and their salesmen?

A. That is right.

Q. Did you ever think of sitting down and writing a letter to some of these monument dealers?

A. Oh, I have thought of it, but then you start trying to pick out monument dealers in twenty-five percent of the U. S., it is a pretty hard thing to do, and a good many of those monument dealers buy in small lots, and unless the salesman consolidates a load, it would be impractical.

Q. In other words, it would be impractical for your truck operation to solicit these small dealers?

A. For any truck operation.

Q. Do I understand that you have been hauling from Vermont? A. We have hauled two loads from Vermont since the first of the year.

[fol. 254] Q. When did you think you got that authority?

A. Last December.

Q. Who supported your application?

A. Glen Morgan.

Q. The I. C. C. practioneer handled the matter for you?

A. Yes, sir.

Q. Were there any Barre County shippers there that supported your application?

A. No.

Q. Did you have any independent jobbers in this area, the states that you thought you had authority to?

A. I just had the granite manufacturers from St. Cloud.

Exam. Roberts: Was your sub 3 application decided before your lead number? I notice that your sub No. 3 application is a certificate dated February 20, 1951, and your lead number is December 6, 1951.

Mr. Coyne: May it please the examiner, I think the lead number is explained on the second sheet there. That is what was left of an assignment of a portion of it to a Mr. Radkee and that is why it has the date of 6 December, 1951, and actually those rights were secured, some of them, in 1943.

Exam. Roberts: Continue.

By Mr. Morken:

Q. Do I understand that as of now you will discontinue any hauling from Vermont back to the midwest? A. Until I find out what the scoop is on it.

[fol. 255] Q. The support that you had in that hearing, did I understand that you had manufacturers from St. Cloud?

A. And Milbank.

Q. And they wanted you to move granite from Barre, that area, to St. Cloud and to Milbank?

A. Yes.

Exam. Roberts: Was that portion of your application denied then, do you know?

The Witness: I don't know.

Exam. Roberts: Did you get a report?

The Witness: When it was issued they corrected it and recorrected it two or three times.

By Mr. Morken:

Q. Then, do I understand that if that authority was granted you would haul from Vermont back to St. Cloud or back to Grant County, South Dakota, and then on your existing authority you would haul it, say, out to Oklahoma as you purport to show on this exhibit?

Exam. Roberts: You mean by that—this is sort of confused.

By Mr. Morken:

Q. Did you think you proved a case and were granted a certificate to haul from Vermont to Oklahoma?

A. Yes.

Q. By the testimony of a witness that wanted granite from Vermont to St. Cloud?

A. A salesman there was a witness for me at that time.

Exam. Roberts: I think these certificates will speak for [fol. 256] themselves, Mr. Morken.

By Mr. Morken:

Q. One more question, Mr. Dingman. As I understand it, you are hauling about ten loads a month at the present time out of Grant County?

A. Yes.

Q. To all of the states which you have authority, some place between two and four of those loads go to the five eastern states and the District of Columbia, your business is profitable?

Exam. Roberts: Is that one question?

By Mr. Morken:

Q. All right, that is a proper summary so far?

A. Yes, sir.

Q. Your business is profitable, is that correct?

A. Yes, sir.

Q. You are not afraid of competition?

A. No, sir.

Q. And yet if Mr. Schaffer is granted this authority to haul for a shipper for whom you are not now hauling he will so seriously jeopardize your business that you will have to curtail your business?

A. It will curtail it some, surely.

Q. And will it curtail it to an extent that it will affect present service that the shippers are now receiving from the Grant County area, South Dakota?

A. Oh, there is a question there on the more trucks you got on the road, the better service you can get.

[fol. 257] Q. If you don't haul it, Mr. Schaffer will, correct, so far as the public is concerned?

Exam. Roberts: Wait a minute.

By Mr. Morken:

Q. You said the more trucks on the road, the better service the people will get?

A. The better service I can give.

Mr. Coyne: Meaning the more trucks that he has available.

By Mr. Morken:

Q. And the same would be true for Mr. Schaffer, would it not?

A. He should be able to give better service, too, with more trucks.

Q. And with the granting of this authority he would be able to give his shipper that you are not now servicing better service?

A. The Dakota Granite Company would probably be hauling it in some other area if Mr. Schaffer did not have his authority.

Q. You just got through saying that they are hauling it in there now on their own trucks. In other words, the movements that we seek to haul from Grant County to the states is now going by private truck, is that your statement?

A. State it again and I will tell you.

Q. The movement that we seek to haul from Grant County, South Dakota, into these eastern states is now going into these states by Dakota's private truck?

A. Either theirs or mine.

Q. You are hauling for Dakota in these states?

[fol. 258] A. We have hauled some for them, yes.

Q. How long ago?

A. We haven't hauled any this spring for them.

Q. It is my recollection that Mr. Stengel testified that he has not used your service for almost two years?

A. Mr. Stengel came out of college a year ago this June, and Mr. Jergensor was replaced by him, and up until that

time we did all the hauling for the Dakota Granite Company.

Q. I gather the termination of your service was no reflection on you, but it was strictly a matter of rates?

A. That is right.

Q. Despite the fact that it took them two weeks to get merchandise from you?

A. That is a misstatement.

Q. You don't have any records with you?

A. That would be on the dispatching table, and usually their telephone calls come in, and we are going to have a load next week for them, and that is the way that dispatching is done.

Q. Since the first of the year the movement from Dakota Transfer have been going into these eastern states in their own trucks?

A. Yes, sir.

Q. And whether or not this service is granted, that movement will probably continue?

A. I don't know that.

[fol. 259] Q. But at least as far as Mr. Schaffer making the haul, he will not take any business that you have enjoyed this year?

A. Not that I have enjoyed this year.

Q. And there will be no added equipment on the highways, no more trucks on the highways?

A. That I don't know.

Q. But it will probably bring under regulations a haul that is now moving by private carriage?

A. I don't know that.

Q. I gather you believe that there is a real need for a motor carrier service from Vermont to the midwestern area and that there is now no motor carrier service available to render that service?

A. That is correct.

Q. That is to haul granite?

A. That is correct, that is all that is involved.

Q. Now, what is the difference between the need of the Vermont people using Mr. Schaffer to this midwestern area and being able to have those same trucks loaded in Grant County so that we can get back to that area profitably? What is wrong with that movement?

Mr. Coyne: I don't follow that.

Mr. Morken: The witness stated that there is a real need to haul from Vermont to Oklahoma. Is there anything wrong with loading that?

[fol. 260] Exam. Roberts: I don't think this witness is the one to decide on that, he is not a shipper.

Mr. Coyne: I object as it is improper examination.

Exam. Roberts: Objection sustained.

Redirect examination.

By Mr. Coyne:

Q. Mr. Dingman, if the Dakota Granite Company, which is now hauling some of its own granite from Grant County, South Dakota, to points in Vermont, Massachusetts, Connecticut, Maryland, and the District of Columbia, should see fit to discontinue that particular hauling with their own trucks, you would be in a position to haul that at the present time, is that correct?

A. Yes, sir.

Q. If they ever discontinue that hauling do you consider that desirable traffic?

Q. Yes.

Q. Would you like to have that traffic, or do you believe the ICC should authorize Mr. Schaffer so that he may put his lesser rates there?

A. I would like to have it.

Q. And you hold yourself out as being able and willing to handle it?

A. Yes.

Q. And you hold yourself out as being able and willing to handle such amount as they may not want to haul them-

[fol. 261] selves, as testified by Mr. Stengel?

A. Yes.

Q. And you desire that you do haul for other shippers at the same time?

A. Yes.

Mr. Coyne: That is all.

Exam. Roberts: You are excused.

(Witness excused.)

Mr. Coyne: I offer Exhibits Nos. 10, 11, 12, and 13.

Mr. Morken: I have no objection.

Exam. Roberts: Exhibits Nos. 10, 11, and 13 will be received, and Exhibit 12 will be rejected.

(Intervenor's Exhibits Nos. 10, 11 and 13, Witness Dingman, were received in evidence.)

Mr. Morken: If the Examiner please, I would like to offer my own Exhibit 12 as my exhibit, and I think that I can explain my position. I think that I can argue that the motor carrier admits——

Exam. Roberts: I am sorry, but the exhibit has been rejected.

Is there any further evidence in this case?

Mr. Cronon: I will call Mr. Olson.

R. M. Olson was sworn and testified as follows:

Direct examination.

[fol. 262] By Mr. Cronon:

Q. Will you state your name?

A. R. M. Olson.

Q. By whom are you employed?

A. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago, Illinois.

Q. What is your position?

A. Commerce assistant.

Q. What are your duties?

A. My duties are to handle matters before the I. C. C. and state regulatory body.

Q. Motor carriers?

A. Motor carriers and formal cases involving rates.

Q. Do you have with you a map of the Milwaukee System?

A. Yes, I do.

(Intervenor's Exhibit No. 14, Witness Olson, was marked for identification.)

Q. Is that the one that has been marked as No. 14 for identification?

A. Yes, it is.
Q. Are the lines of the Milwaukee shown there in red?
A. They are.
Q. Have you circled Milbank, South Dakota?
A. Yes, I have in black.
Q. And you have also circled Chicago, Illinois, right?
A. In blue.

[fol. 263] Mr. Cronon: I will offer Exhibit 14.
Mr. Morken: No objection.
Exam. Roberts: It will be received.

(Intervenor's Exhibit No. 14, Witness Olson, was received in evidence.)

By Mr. Cronon:

Q. Is Milbank on the main line of the Milwaukee?
A. Yes, it is.
Q. Is there direct service into Chicago, Illinois?
A. Yes.
Q. And does the Milwaukee interchange with all other Class I railroads in the United States?
A. Yes, we interchange with all Class I railroads with which we have interchange connections, we interchange with them with terminal lines.
Q. Now, you heard the witnesses today, did you not?
A. Yes, I did.
Q. One of them was from St. Paul. I take it you have direct service from Milbank to St. Paul?
A. We do.
Q. Another one was from Hutchinson, Kansas. Do you interchange freight with lines serving Hutchinson, Kansas?
A. Yes.
Q. How about Fremont, Nebraska?
A. We do that at Omaha.
Q. And Moberly, Missouri?
[fol. 264] A. That would be Kansas City.
Q. And Aberdeen is on your line?
A. That would be local.

Exam. Roberts: Are you speaking of operations originating in Milbank?

Mr. Cronon: Well, I was then, but I am going to cover the other end of it.

Exam. Roberts: I think these witnesses expressed their desire for service out of Barre, Vermont, rather than Milbank.

Mr. Morken: That is my understanding.

By Mr. Cronon:

Q. On shipments originating in Barre, Vermont, do you interchange with lines serving the Barre area and its connecting lines?

A. Yes, we do in Chicago.

Q. Do you have a rail freight service into Milbank?

A. Yes, sir.

Mr. Cronon: That is all.

Mr. Morken: No questions.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: Is there any further evidence at this time?

Mr. Cronon: I will call Mr. Bushek.

E. J. Bushek was sworn and testified as follows:

Direct examination.

[fol. 265] By Mr. Cronon:

Q. Will you state your name?

A. E. J. Bushek.

Mr. Cronon: Mr. Examiner, this witness has a prepared statement, and I understand that counsel for the other parties have no objection to his reading it into the record.

Before doing so, I would like to have the reporter mark the exhibits which are referred to.

Exam. Roberts: Is there any objection to this statement?

Mr. Morken: No objection.

Exam. Roberts: It will be written in the record as testimony.

(Intervenor's Exhibits Nos. 15 to 20, inclusive, Witness Bushek, were marked for identification.)

The Witness: My name is E. J. Bushek. I am employed by the Texas and New Orleans Railroad Company as Assistant Superintendent of Transportation with headquarters in Houston, Texas, which position I have held since April 9, 1951. Prior to that date my railroad experience includes approximately thirty-two years with the Texas and New Orleans Railroad Company in the Operating Department. I began work as a yard clerk in 1920, and since that time have held various positions as Division Agent, Assistant Chief Clerk to Division Superintendent, and Inspector of Transportation. At one time or another I have been in personal contact with train operations over all of the railroad operated by the Texas and New Orleans Railroad [fol. 266] Company. Included in the duties assigned to me as Assistant Superintendent of Transportation is the investigation and handling of motor carrier applications proposing competitive service. I represent the General Manager in this particular, and am authorized to call on other departments of the railroad for various information needed to describe our position in any case.

As I understand it the applicant in this case is seeking authority to transport granite, manufactured and rough, from points in Grant County, South Dakota, to points in Texas, Louisiana, and several other states. Also granite, manufactured and rough, and building stone, from points in Vermont to points in Texas and Louisiana and several other states. We are primarily concerned about the service to points in Texas and Louisiana.

Our railroad interchanges with some thirteen Class I railroads and their subsidiaries that serve or connect with railroads serving South Dakota and Vermont. We operate at least two regular trains daily to all principal points on our line. These trains are presently operating on an average of ninety per cent on time. In addition to the train service, the T and N. O. Railroad offers a supplemental truck service performed by the Southern Pacific Transport Company, a wholly owned subsidiary.

It is our position that the service now offered by our railroad and other railroads and common carrier truck

lines in Texas and Louisiana is entirely adequate to meet present transportation needs. In support of this position, [fol. 267] your attention is invited to the following exhibits:

A map of the T. and N. O. Railroad in Texas and Louisiana, showing territory and principal stations served, mileage between principal cities, connections with other railroads, and so forth.

A map of the Southern Pacific Transport Company showing territory served in Texas and Louisiana.

A report showing mileages, number of stations and agencies in Texas.

A report showing mileages, number of stations and agencies in Louisiana.

A report showing T. and N. O. ownership of locomotives, December 31, 1945, and May 31, 1952.

A statement showing ownership of freight cars and aggregate capacity owned by T. and N. O. as of December 1, 1944, and April 1, 1952.

By Mr. Cronon:

Q. Mr. Bushek, in your testimony you referred to six exhibits. Is the map of the Texas and Illinois Railroad the one which has been marked as No. 15?

A. That is the map of the Texas and Illinois Railroad.

Q. And is the map of the Southern Pacific Transport Company the one that is marked as No. 16?

A. That is right.

Q. And is the report showing mileages and number of stations and agencies in Texas the one marked as No. 17? [fol. 268] A. That is right.

Q. And the report showing mileages and stations and agencies of the T. and N. O. Railroad in Louisiana is the statement marked as No. 18?

A. No. 18 is the mileage and stations and agencies in Louisiana.

Q. And is No. 19 the report showing the number, type and tractive effort of locomotives and freight service owned by the Texas and New Orleans Railroad?

A. That is No. 19.

Q. And is No. 20 the statement showing the number of

freight cars and aggregate capacity owned by the T. and N. O. Railroad?

A. That is No. 20.

Mr. Cronon: We will offer Exhibits 15 to 20, inclusive.

Mr. Morken: No objection.

Exam. Roberts: They will be received in evidence as Intervenor's Exhibits Nos. 15, 16, 17, 18, 19, and 20.

(Intervenor's Exhibits Nos. 15 to 20, inclusive, Witness Bushek, were received in evidence.)

Mr. Cronon: We rest, subject to the possibility of a further hearing.

Exam. Roberts: Gentlemen, as previously indicated, your request for a further hearing at this time is denied, and I presume you gentlemen do not desire to file briefs?

Mr. Morken: That is correct.

[fol. 269] Mr. Cronon: That is correct.

Exam. Roberts: If there is no further evidence at this time, the hearing is now closed.

(Whereupon, at 6:30 p. m., the hearing in the above-entitled matter was closed on Friday, June 13, 1952.)

[fol. 272]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-93529 (Sub. 2)

In the Matter of

A. W. SCHAFFER, d.b.a. SCHAFFER TRANSPORTATION COMPANY, Revillo, South Dakota

Stenographic Notes

Washington, D. C., Room E, Tuesday, December 2, 1952.

Met, pursuant to notice, at 9:30 a. m.

BEFORE:

RICHARD H. ROBERTS, Examiner.

APPEARANCES:

Donald A. Morken, 100 First Soo Line Building, Minneapolis 2, Minnesota, appearing for applicant.

James G. Lane, 226 South Station, Boston, Massachusetts, appearing for Eastern Railroads, (except Chesapeake and Ohio Railway), as protestants.

Claude G. Metzler, 888 Union Station, Chicago 6, Illinois, appearing for Class I Western Rail Carriers, as intervenors in opposition.

[fol. 274] PROCEEDINGS

Exam. Roberts: Come to order, please, gentlemen. There will be no smoking in the hearing room at any time.

The Interstate Commerce Commission has set for further hearing at this time and place Docket No. MC–93529, Sub No. 2, application of A. W. Schaffer of Revillo, South Dakota, doing business as Schaffer Transportation Company.

The issues in this case were previously stated at the prior hearing which was held at St. Paul, Minnesota on Friday, June 13, 1952, and need not be repeated at this time.

Also, any appearances at the prior hearing need not be repeated. Are there any additional appearances at this time?

Mr. Metzler: Claude G. Metzler, 888 Union Station, Chicago 6, Illinois, appearing for Class I Western Rail Carriers as intervenors in opposition. I am an attorney and admitted to practice before the Interstate Commerce Commission.

Mr. Lane: James G. Lane, 226 South Station, Boston, Massachusetts, appearing on behalf of the Eastern Railroads (except the Chesapeake and Ohio Railway) as protestants. I am an attorney at law and admitted to practice before the Interstate Commerce Commission.

Exam. Roberts: Are there any further appearances? Hearing none, we will proceed with the case. Mr. Morken?

Mr. Morken: At this time I will recall Mr. Schaffer.

Exam. Roberts: Mr. Schaffer, you were previously sworn [fol 275] at the prior hearing, were you not, sir?

Mr. Schaffer: Yes sir.

AUBREY WILLARD SCHAFFER having previously been sworn, testified further as follows:

Direct examination.

By Mr. Morken:

Q. You are the applicant and the same Mr. Schaffer who testified at this hearing in St. Paul, Minnesota, in June of this year?

A. Yes.

Q. At that time you offered Exhibit No. 6 which was an equipment list?

A. Yes.

Q. Has there been any change in that equipment since the hearing?

A. Yes, there have been two tractor trailer units replaced by new equipment.

Q. And that is the only change?

A. Yes.

Q. You are still operating the same number of vehicles that you were operating at that time?

A. Yes.

Q. You also offered Exhibit No. 7 which was the balance sheet and an operating statement for your various operations. That was for the year ending December 31, 1951. Do you recall that exhibit?

[fol. 276] A. Yes.

Q. Has there been a more recent financial statement prepared since that time?

A. No, not a financial statement. Our auditor gave us figures on the Federal income tax return. He sends in a quarterly report and he makes just one yearly financial statement, and that won't be made until some time in the forepart of January closing the fiscal year.

Q. As far as your balance sheet is concerned, that is your total assets and total liabilities, has there been any substantial change in that picture since December 31, 1951?

A. Yes sir, this year has been a much better year than 1951 for us. In fact, it has been a very good year in our operations and shows a considerable more net profit.

Q. That is for your operating statement.

A. Yes.

Q. As far as it stands now, do you have an approximate idea of how your operating picture is for the year to date, or what it will be at the end of this year?

A. Well, if the month of December, we assume, will be an average month, the net operating profit will show approximately $12,000.

Q. And with that net operating profit there would be a proportionate change in your assets and liabilities, is that right?

A. Yes.

Q. Otherwise, the situation for you is about the same, if [fol. 277] not the same as it was when you testified in June?

A. Yes.

Mr. Morken: That is all I have at this time with this witness.

Exam. Roberts: Cross-examination, Mr. Lane.

Cross-examination.

By Mr. Lane:

Q. May I look at the docket, please? In reading the transcript of the previous hearing Mr. Schaffer, I gather that you intend to pick up granite if authority is issued by the Interstate Commerce Commission in the Barre, Vermont area for transportation to the sixteen destination states named in your application.

A. If the permit is granted, yes.

Exam. Roberts: May I ask, Mr. Lane, does your interest in this case involve only the operations originating in Vermont?

Mr. Lane: That is right, sir. Did you say was my interest restricted to that?

Exam. Roberts: Yes.

Mr. Lane: No. I am interested in both directions.

Exam. Roberts: From the Grant County area out of South Dakota?

Mr. Lane: My questioning primarily will be directed to the outbound movement from Vermont.

Mr. Morken: If the record can reflect this, in requesting this authority I stated in the letters that went to the differ-

[fol. 278] ent parties that as far as the applicant was concerned we would only offer testimony relative to the movement of granite from the Vermont area back. We would not offer any additional testimony as far as South Dakota origin to the additional states that were requested.

Exam. Roberts: I think that is a matter of record at the present time. Proceed.

By Mr. Lane:

Q. Revillo, South Dakota is in Grant County, is it not?

A. Yes.

Q. I read over the transcript of the previous hearing and I don't believe I noted any testimony with respect to the highway mileage. Do you know approximately what the highway mileage is from Barre, Vermont to Revillo, South Dakota of any point in Grant County, South Dakota?

A. I would say approximately 1,600 miles.

Q. Your tractors have the conventional cabs, do they not?

A. That is right.

Q. No sleeper cabs?

A. No sleeper cabs.

Q. Under the proposed method of operation, will your drivers operate so many hours and then put up over night?

A. Yes.

Q. At various places?

A. Yes.

[fol. 279] Q. Taking a typical example and a truckload of granite leaving Barre, Vermont on Monday, will you tell the Examiner how the driver would operate, where he would go during the first day's travel and the second day's travel and so on.

Mr. Morken: To what destination?

By Mr. Lane:

Q. Let us take Grant County, South Dakota as a typical destination.

A. It would depend largely on the road conditions and the weather conditions and also the distance. You did say Grant County?

Q. Yes, let us take Grant County as a typical destination.

A. Well, if he left Barre, Vermont on a Monday morning, he would drive—I think the maximum hours set up by the Interstate Commerce Commission is ten hours in any day and our drivers will only drive eight hours, and then we expect them to have the rest and depending upon the road conditions largely will determine the amount of miles he may travel. His tie-up for rest periods would be at intermittent places because there is no given point, no set point, as to where they must take rest, must tie-up.

Q. There are no established relay stations?

A. No; no established relay stations other than Chicago, and if it requires three days to get there, it is three days. If it requires two and one half days, it is two and one half days.

Q. How many days on an average would you expect the [fol. 280] driver to consume from Barre, Vermont to Grant County, South Dakota?

A. It would vary, but I would say approximately six days.

Q. Do you know what your operating cost is per mile?

A. It varies considerably.

Q. Under those you propose to use in this service from the Barre, Vermont area to the destination states here involved, what would the operating cost be?

A. Well, that would vary greatly with the size of the load, also the weather conditions.

Q. On the outbound movement from Barre, Vermont to these destination states in every instance you would use tractor trailer units, would you not?

A. That is right.

Q. Did you make any study to determine whether or not you could operate at a profit from Barre, Vermont to these sixteen destination states?

A. Yes sir.

Q. And as a result of that study, did you arrive at some average cost per mile?

A. Well, we took the average cost of our now existing authority and this would be practically the same movement, only in reverse, the movement that we now have from Grant

County, South Dakota to New York and Pennsylvania on the authority that we now have, it would run practically the same.

Q. How much is that, Mr. Schaffer?

[fol. 281] Mr. Morken: Mr. Examiner, at the previous hearings I reread this transcript and we have quite a bit of testimony in there on the question of days, the length of time. He told about the trucks he now has in New York and Pennsylvania, a matter of filling them up and coming back in the other direction and tying it in with this operation. I wonder if this is unnecessary repetition. I don't know what Mr. Lane has definitely in mind. If he thinks the operation is unprofitable, that is Mr. Schaffer's tough luck.

Exam. Roberts: We definitely want to avoid repetition, but I think if Mr. Schaffer would be a little more responsive to the questions here, we could move along further and we won't prolong the interrogation. Continue, Mr. Lane.

By Mr. Lane:

Q. What is the cost of operation per mile on your existing operation?

A. Would you want just the cost of the operation or include the driver, or do you want it broken down separately or grouped together?

Q. I would like to have it all grouped together and then you can break it down separately.

A. Well, the cost of operation would be approximately twelve cents a mile.

Q. And that includes the driver?

A. Yes.

Q. And this is on a tractor trailer unit with the maximum [fol. 282] weight limits on the vehicle and a load of fifty thousand pounds.

A. Do you want the depreciation taken in on the equipment, or do you want the cost of the gasoline and the oil and the driver?

Q. We want the cost of the depreciation and all the factors that enter into the cost of operation.

A. If you take your depreciation and all, I would say approximately sixteen cents a mile.

Q. Does that take in insurance and the driver's wages?

A. Yes.

Q. And his road expense for putting up overnight at these various places?

A. Yes.

Q. You assisted in preparing this application prior to signing it, did you not?

A. Yes.

Q. Why didn't you notify the existing motor carriers who were authorized to transport granite from the Barre, Vermont area to their connecting carriers in the Boston, Massachusetts and Springfield, Massachusetts area?

A. Because we were not in competition with them. I know of no other motor carrier that has the service we are now asking for.

Q. What investigation did you make to determine whether [fol. 283] or not you would be competing with St. Johnsbury Trucking Company?

Mr. Morken: For your information, we have a letter here, and one of the witnesses will testify as to St. Johnsbury. They have no interest in the proceeding and cannot provide the service.

Mr. Lane: I want to know how he complied with the Administrative Procedure Act with respect to notice.

The Witness: I checked with the local District Director of the Interstate Commerce Commission; I checked with my attorney; I checked with Mr. Perry Moore and Mr. Morken checked with the Commission also on prevailing means of service that I could through the manufacturers at Barre and all means that I knew possibly where I could check.

By Mr. Lane:

Q. Did you check with the District Director of the Bureau of Motor Vehicles of the Interstate Commerce Commission at Boston, Massachusetts?

Mr. Morken: I object to the question as being immaterial.

Exam. Roberts: Overruled. He may answer.

The Witness: I did not.

By Mr. Lane:

Q. Did you notify any motor carrier domiciled in the New England area with respect to your application?

A. I would have reference to my attorney on that.

Mr. Morken: You didn't check with anyone, did you?

The Witness: No.

Mr. Morken: Just answer no, you didn't check with anyone.

[fol. 284] By Mr. Lane:

Q. What makes you think you could conduct this operation at a profit from Barre, Vermont, for example, to Dallas, Texas?

A. Well, it could be constructed just as well from Barre, Vermont to Dallas, Texas as it would be from Grant County, South Dakota to New York City.

Q. Do you know whether or not you would get business from Barre, Vermont to Dallas, Texas, any business?

A. I assume that I would.

Q. Do you know?

A. Only what dealers and manufacturers have requested.

Q. Do you know how the present movement of granite is being transported from Vermont to points in the State of Texas?

A. Some of them by——

Mr. Morken: Answer it yes or no.

By Mr. Lane:

Q. Do you know?

A. Yes.

Q. How is it transported?

A. By rail.

Q. You have definite personal knowledge?

A. Yes.

Q. Did you make any investigation of the service now being rendered by the rail carriers in the transportation of granite from Vermont to points in the State of Texas?

A. What was that question?

[fol. 285] Q. Did you make any investigation of the ser-

vice now being rendered in the transportation of granite from points in Vermont to points in Texas by the rail carriers?

A. Yes sir.

Q. What is the service for example, from Barre, Vermont to Dallas, Texas?

Mr. Morken: I object to the question as having an improper foundation.

Exam. Roberts: I will overrule the objection. You may answer.

The Witness: Well, the information I received from my investigation.

By Mr. Lane:

Q. Just a minute, please. I want your personal knowledge, not something that somebody told you. I want to find out from your own personal knowledge.

A. Well, my own personal knowledge, I find that carload shipments were satisfactory and less than carload shipments were not satisfactory.

Q. Do you know whether at any time during the past two years there were any carload shipments or any less than carload shipments from the Barre, Vermont area to any point in the State of Texas?

A. Not offhand, I couldn't say.

Q. If I asked the same question with respect to the other destination states, would your answer be the same?

[fol. 286] A. I would say no on that.

Q. Well, with regard to what states would you say you had no knowledge, of the sixteen.

A. I don't know just what you mean on that question.

Q. Have you any personal knowledge of any actual movement to each one of these sixteen destination states, with the exception of Texas, concerning which you have already testified?

A. Yes.

Q. Let us take the State of Wyoming. Do you know whether or not there are any shipments from the Barre, Vermont area to the Wyoming area during the past two years?

Mr. Morken: I object to the question as having an improper foundation.

Exam. Roberts: I think we are going into something that can be brought out by shipper testimony than by applicant testimony. I will permit the applicant to answer the question but I don't want to dwell on that too much on that line of testimony.

Mr. Lane: I agree with that, but I believe, with respect to his answer regarding Texas, he has not made any study of the movements.

Mr. Morken: And if he hasn't, what difference does it make?

Exam. Roberts: Just a minute, gentlemen. I don't want to go into any detailed questioning of the need for service [fol. 287] from the applicant witness.

Mr. Lane: Actually I am not trying to develop the need for service as to whether or not he knows what he is up against in regard to the application.

Exam. Roberts: Perhaps you can reframe the question.

Mr. Lane: I will, sir.

By Mr. Lane:

Q. Mr. Schaffer, did you make any investigation as to whether or not you could secure traffic and conduct a profitable operation from the Barre, Vermont area, for example, to points in the State of Wyoming?

A. Well, not particularly Wyoming, but to different states in the area we did have correspondence with a dealer at Sheridan, Wyoming and we figured out the revenue approximately what it would be.

Q. What would the revenue be to Sheridan, Wyoming from Barre, Vermont?

A. I haven't got the figures before me. I haven't got a copy of them. I don't remember offhand. It was figured in our office and gone over by our bookkeeper and as to the exact figures, I couldn't give them to you.

Q. How was the figure? Was it against the rail rates?

A. Yes. It was figured in comparison with rail rates.

Q. Rail less than carload?

A. Rail less than carload and also carload shipments.

Q. To get the business you would have to do better than [fol. 288] rail rates, at least less than carload.

A. No, I didn't say that.

Q. Coming back to your destination territory, to what area do you expect to opprate substantially in the sixteen states?

A. To what area, did you say?

Q. Yes, what part of the sixteen states do you expect to operate to?

A. Any one or all of them.

Q. But you don't know where the traffic will develop, is that true?

A. Well, it will develop in all of them because there is movement into all of those states applied for.

Mr. Lane: I think that is all I have of this witness at this time, Mr. Examiner.

I reserve our rights, I wish to raise the question of compliance with the Administrative Procedure Act in regard to notice. It is obvious with regard to examination of the docket that there are numerous motor carriers authorized to perform transportation to the territory here involved through interline service who were not notified of this hearing.

Mr. Morken: May I ask Mr. Lane one question in regard to that?

Exam. Roberts: Yes.

Mr. Morken: Are you claiming, as far as any of your clients or any of the people that you claim to represent, that [fol. 289] you did not get proper notice of this hearing?

Mr. Lane: In so far as rail carriers are concerned.

Mr. Morken: In so far as you or your association or your clients, and I don't know what your association with them is, but are you claiming that you did not get proper notice?

Mr. Lane: I am not claiming lack of notice, but I am claiming that the applicant did not furnish proper notice in compliance with the Administrative Procedure Act.

Mr. Morken: You are not claiming that you didn't get notice?

Mr. Lane: No, not me.

Exam. Roberts: Are there any further questions?
Mr. Metzler: Yes, Mr. Examiner.

By Mr. Metzler:

Q. In reference to the question of sixteen cents per mile, are you going to introduce a late filed exhibit showing those actual costs?
A. No.
Q. It is more or less just your guess or wish or speculation that the cost of the business is about sixteen cents per mile?
A. It is taken from the actual records in the office now existing.
Q. As far as the proposed movements are concerned, it is speculative and conjectural?

Mr. Morken: Do I understand that question correctly? May I ask the witness if he understands it?
[fol. 290] The Witness: He said, as far as I understand, that the business that we expect to get, is that the question?
Mr. Morken: Will you read the question please, Mr. Reporter?

(The last question was read by the reporter.)

Exam. Roberts: You can't tell what the operating costs will be on any operation you have never conducted, is that right?
The Witness: That is right.
Mr. Metzler: I used the word "proposed".
Exam. Roberts: I think this witness was confused on your question. Proceed.

By Mr. Metzler:

Q. Does that include deadhead mileage, that sixteen cent figure?
A. Yes, it includes deadhead mileage.
Q. Does that mean, say from Pennsylvania or New York or even farther west up to Vermont you wouldn't be getting any profitable mileage?

Mr. Morken: Any what?

Mr. Metzler: Is the deadheading from Pennsylvania up to Vermont then?

Mr. Lane: Is the cost of that mileage added to the deadhead mileage?

Exam. Roberts: Address your questions to the witness. Do you understand the question?

[fol. 291] The Witness: I don't quite understand what you are arriving at there.

By Mr. Metzler:

Q. You say there would be some deadhead mileage figured into it, and I was wondering to what extent or how much mileage that would be.

Exam. Roberts: In other words, between what states would the deadhead mileage occur?

The Witness: That would be very hard to say.

Exam. Roberts: How do you propose to perform operations up to Barre, Vermont to originate a load of granite from that point westbound?

The Witness: Yes.

Exam. Roberts: How do you propose to do that?

The Witness: Our proposal is that under the present authority that we have to truck granite from the Grant County area in South Dakota into the East, and using the Barre, Vermont granite as a return load.

Exam. Roberts: What counsel is trying to find out is how much deadhead mileage would be involved.

The Witness: It would vary from load to load.

Exam. Roberts: Let us give a specific instance. You don't seem to be giving us direct responses.

The Witness: I don't quite understand what he means.

Exam. Roberts: What is the furthest point in the East which you are now authorized to serve out of Grant County, [fol. 292] South Dakota.

The Witness: New York City or possibly Albany, New York.

Exam. Roberts: And you would deadhead from those points to Barre, Vermont?

The Witness: That is right.

Exam. Roberts: To pick up a load?

The Witness: Yes.

Exam. Roberts: How many miles is that?

The Witness: Two hundred to two hundred and fifty, I would say, possibly one hundred and fifty in some cases.

By Mr. Metzler:

Q. You brought your financial statements and information, you said, and I was wondering what was the most recent date when one of your drivers was arrested for overloading or speeding or something like that.

A. I don't know that there has been any violations in overloading or speeding in the past year.

Q. Weight shifting?

A. No, no weight shifting.

Q. I don't recall whether or not questions brought out at the St. Paul hearing this matter, but how much of your equipment is going to be devoted to these proposed movements that you are seeking authority for?

A. All of the equipment, if it is requested.

Exam. Roberts: Can you give us a definite number of tractor trailer units?

[fol. 293] The Witness: Well, there would be, at the present time I believe there are seven or eight tractor trailer units, is it not?

Examiner Roberts: That will be used in your proposed service?

The Witness: Yes, there are eight tractor trailer units.

By Mr. Metxler:

Q. In other words, with substantially the same equipment you are planning to serve literally the whole country.

A. It depends on the need for the equipment. If it is required to need more equipment, we will then put on more equipment.

Mr. Metzler: That is all.

Exam. Roberts: Is there any redirect examination?

Redirect examination.

By Mr. Morken:

Q. Do I recall your testimony correctly that at the previous hearing you testified that all of your equipment as far as its going to the East would be available to backhaul from that area in connection with your existing operation?

A. Yes.

Q. And as you contemplate things now, if this authority is granted, you will station three trucks at the Barre, Vermont area with a full tiime time company employee there and it is your plan to start the operation if it is authorized [fol. 294] with three additional trucks, or would it be three of those eight?

Mr. Lane: Objection. Who is testifying?

Mr. Morken: I am refreshing his recollection.

By Mr. Morken:

Q. Those three trucks that you testified that you were going to put there are three of those eight, or will it be three additional pieces?

A. No, it will be three new pieces of equipment.

Mr. Morken: That is all.

Recross-examination.

By Mr. Lane:

Q. These three units that will be stationed at Barre, Vermont will be used to haul granite to any point in the sixteen destination states, is that correct?

A. Yes.

Q. When the Examiner asked you about backhaul, you mentioned that the same vehicles might be dispatched eastward to a point such as Albany, New York and then deadheaded to Barre, Vermont, is that correct?

A. No, it will be loaded in South Dakota and returned back to the East.

Q. Yes, with building stone and then deadhead to Barre, Vermont, is that correct?

A. Yes.

Q. And you gave the Examiner or Mr. Metzler an example of Albany, New York as being a typical point where you would deadhead to Barre, Vermont. Will you tell the [fol. 295] Examiner what would be the most distant point in the East where you would have to deadhead to Barre, Vermont?

A. The most distant point I would probably deadhead from would be some spot in the State of Ohio.

Q. That would be around seven hundred or eight hundred miles, would it not?

A. Probably six hundred miles, but it is not necessarily deadhead either.

Exam. Roberts: Just answer the question propounded to you as to deadhead mileage.

By Mr. Lane:

Q. It is six hundred miles at sixteen cents a mile producing no revenue. Will you tell the Examiner whether the cost of that operation would be added on to the cost of the operation on the outbound shipments from Vermont?

A. It would be divided, I presume.

Mr. Lane: That is all.

Exam. Roberts: Mr. Metzler, do you have any further questions?

Mr. Metzler: Nothing further.

Mr. Morken: I would like to ask another question.

Exam. Roberts: Just a moment, Mr. Morken: We are going around only twice.

Mr. Morken: Well, it is all in the record.

Exam. Roberts: You may be excused.

(Witness excused.)

[fol. 296]. Exam. Roberts: Call your next witness.

Mr. Morken: I call Mr. England.

HEBER ENGLAND was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Will you state your name please?
A. Heber England.
Q. By whom are you employed, Mr. England?
A. Jones Brothers Company, Barre, Vermont.
Q. What is your position with that company?
A. President.
Q. Are you also an owner or part owner of that company?
A. Yes sir.
Q. Will you describe briefly just what Jones Brothers Company is; what they do, where they do business?
A. Jones Brothers Company are located in Barre, Vermont. Their primary business is the manufacturing of granite monuments. We also own a quarry company whose primary business is the quarrying of rough granite and monumental material.
Q. Does your company do business outside of the Barre, Vermont area?
A. It does business in most states in the Union.
Q. Do you market your products under any trade name or advertising name?
A. Our finished monuments are trade-marked under the [fol. 297] name Guardian Memorials.
Q. Are you able to tell us in some way of the size, or by volume or by comparison, the size of your company in this business?
A. You mean as to volume of sales?
Q. Well, first generally, are you one of the larger companies operating in the United States?
A. Yes we are.
Q. Are all of your shipments from Barre, Vermont or the immediate Barre area; that is outbound shipments of granite?
A. Probably ninety percent. The other ten percent would be foreign granite from the Port of Boston.

Exam. Roberts: That wouldn't be involved in this service that the applicant proposes.

The Witness: I don't believe so.

By Mr. Morken:

Q. You are familiar generally with the application and the proposal of Mr. Schaffer to institute a trucking service from Vermont to the sixteen midwestern states, are you not?

A. Yes.

Q. Is your company presently making shipments from this Barre, Vermont area to these sixteen states?

A. Yes we are.

Q. Can you give us the approximate weight in tonnage that your company shipped to these sixteen states last year?

A. Approximately 1,600,000 pounds.

[fol. 298] Mr. Morken: Mr. Examiner, I have for this witness an exhibit, and for my next witness some exhibits and I had a public stenographer make copies of these last night. We have had no opportunity to proof-read them. They do not involve too many numbers or figures, and in offering these I would like it understood that there might possibly be typographical errors, but otherwise they are correct as the witness had them made up.

Mr. Lane: May we go off the record.

Exam. Roberts: Off the record.

(There was a discussion off the record.)

Mr. Morken: May this document be marked for identification as the next exhibit, Mr. Examiner?

Exam. Roberts: That will be identified as Applicant's Exhibit No. 22.

(Applicant's Exhibit No. 22, Witness England, was marked for identification.)

Exam. Roberts: Do you have another exhibit, Mr. Morken?

Mr. Morken: Yes, I would like to have this next document identified with the next number, Mr. Examiner.

Exam. Roberts: The next one will be identified as Applicant's Exhibit No. 23.

(Applicant's Exhibit No. 23, Witness England, was marked for identification.)

By Mr. Morken:

Q. Will you refer to what has been marked as Exhibit No. 22? Can you identify that for us please and tell us [fol. 299] what it is?

A. It is headed List of Dealers, Jones Brothers. This is a list of dealers that we sell to in the territory involved.

Q. You took this list of these dealers from your company records?

A. That is correct.

Q. Are you supplying these people currently and as frequently as they order shipments?

A. We are.

Q. What is your present method of shipping to these people?

A. We ship three ways: In some instances carload; in some instances pool carloads; and in some instances less than carload.

Q. Can you tell me the number of pool carload shipments that you had last year? Does the figure of 117 mean anything?

A. No, the figure 117 is the total dealer list we sell in the territory.

Q. And you don't need to count the others for pool car shipments?

A. I would say there are probably fifty.

Q. Are you using any motor carrier service on these granite shipments at the present time?

A. No, not into the territory under discussion.

Q. Why is that?

[fol. 300] A. To my knowledge there is no carrier service available.

Q. Will you describe to us the existing rail service as far as taking care of your needs, and I have in mind will you testify whether it has been satisfactory or unsatisfactory?

A. We feel that carload shipments are satisfactory. We feel that pool car shipments are not very satisfactory. We feel that less than carload shipments are unsatisfactory.

Q. Why is that? Let us take the less than carload shipment first.

A. The reason for the less than carload shipments as being unsatisfactory is that the length of time involved in

shipment, the complaint on the part of dealers occasionally for damage and the cost of less than carload shipments. There are many small dealers in the country who are not big enough to warrant carload orders. These dealers, because they are handicapped in the length of time involved for less than carload shipment, and because of the cost, are changing their buying habits to centers from which they can get quicker service and because of trucking service, lower rates.

We feel that it is a serious handicap to the granite industry of Vermont.

Q. Do you have truck service from your area to other points in the United States, that is points not involved in this application?

A. Yes, there is truck service in to New York and in to [fol. 301] Pennsylvania.

Q. You are familiar generally then with what a truck can do hauling this granite as compared to what the railroads can do with respect to these less than carload and pool car shipments?

A. Yes I am.

Q. If you will refer to what has been marked for identification as Applicant's Exhibit No. 23, can you identify that for us please? Tell us what it is.

A. This, as you have marked it Exhibit 23, involved the dealers that we have shipped to in pool cars and the list shows the time that the monuments were actually finished at our plants and the length of time that we had to hold, to warehouse them to tie up our money, before they could be shipped. In other words, we had to hold the shipments until the pool car was available, a full car could be gathered.

An examination of this list will show a very serious lull from the time goods are finished to when they are shipped. Not only do we have big sums of money tied up which tend to increase our costs, but the dealer oftentimes, handicapped with these long delays, is very seriously handicapped and his tendency is to again ship to centers where he can get quicker service.

Q. Again returning to this exhibit, first, who prepared this from your company's records? Did you prepare it?

A. This was prepared for me by our shipping clerk from [fol. 302] our records.

Q. At your direction?

A. At my direction.

Q. Do I interpret it correctly where this Lee M. Bogle Company of Minneapolis, Minnesota received three pool cars on the dates specified; one in May of 1951; one in April of 1952; and would he get two cars in April 1952, on April 5, 1952?

A. Yes.

Q. And the product you had for him was finished some time prior to its being shipped, but it had to be held up until there were enough other orders to put into that pool car?

A. Correction, I don't believe there were two cars. I believe those items were finished and shipped in the April 5th car.

Q. There were two different orders but both went in the same car?

A. Yes.

Q. But that was held up, they were held up until there were sufficient other orders from the Minneapolis, Minnesota area to make up a pool car to that area?

A. That is correct.

Mr. Morken: I will offer Exhibits 22 and 23 in evidence.

Exam. Roberts: I will reserve ruling on them at this time until after the conclusion of the cross-examination.

By Mr. Morken:

Q. Do you have with you some exhibits, some actual freight bills and bills of lading that show the speed of [fol. 303] service on less than carload shipments?

A. Yes.

Q. Can you point out and give us the dates and the origin point and the destination of some representative shipments? I don't think you should read them all. You have quite a few there, do you not?

A. Yes, we will take the McFall Monument Company.

Q. Where are they?

A. In the State of Illinois.

Q. Please proceed.

A. Here is the freight bill, No. 6838, way bill 243, date

shipped December 7, 1948 and date delivered December 14, 1948.

Exam. Roberts: Are any of those shipments shown on Exhibit No. 23?

The Witness: I don't believe so, sir.

By Mr. Morken:

Q. If I can ask you, Mr. England——

A. No.

Q. Exhibit No. 23 is just pool car shipments and you are referring to typical examples of less than carload shipments?

A. That is right.

Mr. Lane: Before there is any further interrogation on these bills, I would like to make inquiry as to whether these are the original freight bills and whether these are the delivery receipts accompanying the original document.

Exam. Roberts: I think you can bring that out on cross-[fol. 304] examination.

By Mr. Morken:

Q. I will ask you whether these documents that you are referring to on these less than carload shipments, that is the original freight bill?

A. That is correct, sent back to us by the dealer.

Q. And it shows not only the origin date but the date that it was delivered?

A. Yes.

Q. And that is the information that you are referring to when you read off that one shipment?

A. That is right.

Q. What was the elapsed time on that shipment that you read, number of days?

A. That shipment was one week.

Q. Is that good service or is that slow service?

A. I would call that good service for less than carload.

Mr. Lane: Could I have the way bill date on that and the number.

Mr. Morken: Will you read that, please?

The Witness: The way bill is 521221.

By Mr. Morken:

Q. The originating carrier was who?

A. Originating Barre and Chelsea, but it was the Chicago, Burlington and Quincy.

Exam. Roberts: That was the delivering carrier, the Chicago, Burlington and Quincy.

[fol. 305] The Witness: That is correct. I will have to find that particular one now if he wants it.

Mr. Lane: It will make it that much easier on cross-examination.

The Witness: Yes, I have it here. There is a correction. Freight bill number is 6838.

I have another instance of freight bill No. 6374, way bill No. 1013, date shipped December 26, 1947, date received January 7, 1948.

Another we might look at would be freight bill No. 8240, way bill No. 104844, date shipped June 19, 1947, date delivered June 28, 1947.

I have perhaps another then illustrations to that same dealer, but I have other dealers here.

By Mr. Morken:

Q. For this particular dealer I notice we are back in 1947 and 1948. Did you take all of his shipments for a certain period of time?

A. I am not sure.

Q. Do you have any more examples that are more recent?

A. Boise Monuments and Wilbert Vault Company, freight bill No. 526, way bill No. 461; date shipped December 21, 1951, date delivered January 14, 1952.

Same dealer, freight bill No. 561, way bill No. 46; date shipped January 10, 1952, date delivered January 29, 1952.

Q. Could I ask you this; just looking at those sheets on [fol. 306] which you have the weights, you probably have forty or fifty different bills there, have you not?

A. Twenty-five or thirty.

Q. Can you summarize those generally as far as the average delivery time of the less than carload shipments

from the Vermont area to these points in the Midwest are concerned?

A. They vary from one week to a good two weeks. In some instances, more.

For example, I will give one more. No 512 is the freight bill and the way bill number is 321; shipped on November 15, 1951 and delivered on October 8, 1951.

Mr. Lane: What was the destination of that?

The Witness: That is Boise Monuments and Wilbert Vault Company, Lyons, Iowa.

Exam. Roberts: Is that the same dealer shown on the second page of Exhibit No. 22 at Clinton, Iowa?

The Witness: Yes, that is the same dealer.

Exam. Roberts: At Clinton, Iowa?

The Witness: Yes.

By Mr. Morken:

Q. The last one you read was a little over three weeks?

A. Yes.

Q. And the one you read of December 21, 1951 and delivered January 14, 1952 was a little over three weeks, was it not?

A. Yes.

[fol. 307] Q. Again, is there any average time that your company feels it must allow for delivery on less than carload shipments between Vermont and the Middle West, such as Iowa or Illinois?

A. Well, our business is seasonal and certainly in the spring our business every day counts from a dealer point of view.

Q. When this less than carload rail service is used, are you able to promise or guarantee any delivery time?

A. Not except within a three week period.

Q. Would the availability of a motor carrier service that can make delivery on the 5th or 6th day in Illinois or Iowa be a convenience in your business?

A. Yes it would.

Q. You mentioned in a statement the fact that other companies had motor carrier service into the Midwest that you did not. Do you recall any of them?

A. It is my understanding that there is motor carrier service from the Elkton, Georgia district into the territory under consideration. I understand that service is available from Minnesota into that territory, and it is my contention that the very fact that those two centers have this service is a severe handicap to those of us who are manufacturers in Barre, Vermont.

Q. Are you able to tell us whether or not your company has lost business because of the lack of transportation services in these middle western states?

[fol. 308] A. That has been called to my attention by our full salaried salesmen and an occasional dealer.

Q. Has your company considered instituting its own private truck service?

A. We feel that if we can't get some common carrier, that it is very possible that we will have to go into the trucking business ourselves.

Q. Has your company discussed that proposal or that proposition of private trucks service?

A. Has some company discussed what? I don't quite get your question.

Q. Has it been the subject of discussion in your company, this private truck service?

A. Yes.

Q. It is not something about the future, but it has been under discussion?

A. Yes, it has been under discussion.

Q. If this service is authorized, do you think it will meet your transportation needs for truck service into the Midwest?

A. I believe it would.

Q. If this service is authorized, do you intend to discontinue using the rail service?

A. Not at all. We believe in the railroads, believe they are necessary, and I further believe that a substantial volume of business that is going to other centers would [fol. 309] come to Barre, and actually increase business so far as that is concerned, increase it sufficiently so that the railroads would get more business than they are getting now.

Q. Just how would this truck service increase your overall business?

A. At the present time, quite frequently dealers, in competing against each other, each one is a substantial buyer of Barre granite, advertises it and sells it, other dealers will likewise be forced to do it and we believe that by getting more outlets through carrier service, especially on less than carload shipments because there is more and more a tendency or shift to Barre granite.

Q. Will the institution of this service make it possible for you to acquire new customers, new markets for your product that you cannot reach now?

A. Yes, we believe so.

Q. As far as your using the rail service and liking it, are you also connected officially with one of the railroads in Vermont?

A. I am.

Q. Which railroad is that?

A. The Barre and Chelsea Railroad.

Q. What is your connection with that railroad?

A. Director and Treasurer.

Q. I gather from what you have said and also your con- [fol. 310] nection, you are a firm believer in railroads and want good strong railroads.

A. We do, and in fact we are part owners of the railroad in question.

Exam. Roberts: With what frequency would you use applicant's service if it were authorized from Barre, Vermont?

The Witness: I think that we would have almost daily need of it. In other words, I have some one thousand active dealers and every day work is being finished out through this territory.

Exam. Roberts: What would be the volume of that traffic that would move out daily?

The Witness: I haven't broken down the value that we have shipped less than carload versus carloads.

Exam. Roberts: Would it amount to more than one truckload a day?

The Witness: It would not.

Exam. Roberts: It would not?

The Witness: No, not from our firm alone.

Exam. Roberts: What would you consider an average truckload, in weight?

The Witness: From our firm?

Exam. Roberts: Yes, of your product.

The Witness: I understand the trucks can haul up to fifty thousand pounds. I am not sure I understand your [fol. 311] question.

Exam. Roberts: Have you ever used motor carrier service in the past?

The Witness: Yes.

Exam. Roberts: What do you consider an average truckload, what weight?

The Witness: An average truckload, ten to twenty tons.

Exam. Roberts: That is approximately forty thousand pounds as an average, is that correct?

The Witness: Yes.

Exam. Roberts: Would you have forty thousand pounds a day moving outbound from Barre, Vermont to this sixteen state destination territory?

The Witness: That would be eight million pounds a year, and our total shipments out there were only 1,600,000 pounds.

Exam. Roberts: So you would have approximately, based on that as an average, only about five thousand pounds, would you not, or one eighth of that amount?

The Witness: Yes. There are seventy-three manufacturers in Barre, Vermont.

Exam. Roberts: We are interested only in your output as to what need you would have for this man's service out of Barre, Vermont. Would you have as high as five thousand pounds a day moving out of there?

The Witness: On an average, no, I would say perhaps two [fol. 312] hundred pounds. In other words, of this 1,600,000, I rather gather that say 600,000 pounds were less than carload shipments and dividing 600,000 pounds by two hundred days, that would be about 3,000 pounds on an average a day.

Exam. Roberts: A day?

The Witness: Yes.

Exam. Roberts: Would you consolidate those shipments weekly or would you expect them to transport that outbound each day?

The Witness: From our point of view we would like to have them out each day, and the dealer would like them each day.

By Mr. Morken:

Q. You have no objection to the carrier consolidating your shipments on his truck with shipments from other manufacturers?

A. Not at all.

Q. Just as long as they are moved at the first possible moment?

A. That is right.

Q. Are you getting daily outbound movement by truck to other areas? I mean not the Midwest.

A. Pennsylvania and New York.

Q. Motor carriers are giving you that service now?

A. Yes.

Q. Daily service?

A. Yes.

[fol. 313] Q. Prior to coming here, did you meet with other shippers of the Barre Granite Association and discuss this proposal?

A. I did.

Q. Was Mr. McBride at that meeting?

A. He was.

Q. Did you, as well as certain other shippers, authorize him to appear and testify in this proceeding?

A. We did.

Q. And he is present in the room?

A. Yes.

Mr. Morken: That is all.

Exam. Roberts: We will take a short recess.

(Short recess.)

Exam. Roberts: Come to order, please, gentlemen. Proceed with your cross-examination, Mr. Lane.

Cross-examination.

By Mr. Lane:

Q. On your Exhibit No. 22 you have a number of dealers listed for the State of Wisconsin. Are any of those dealers in Wisconsin strictly carload receivers?

A. On occasion. Any one or two or three might be a carload buyer.

Exam. Roberts: From what point would that move?

The Witness: Well, like Zimmerman, we might have a carload for them.

Exam. Roberts: That is located in Milwaukee, Wisconsin.

[fol. 314] The Witness: Yes.

By Mr. Lane:

Q. Do you mean you have participating pool car shipments to Wisconsin points?

A. Yes.

Q. On all of the states listed on Exhibit No. 22, they all receive pool car shipments as well as carload, do they not, with the exception of the State of Wyoming?

A. There may be some exceptions, but in most instances, yes.

Q. The pool car arrangement involves the aggregation of a number of less than carload shipments and then the carload moves on one bill of lading to one consignee, is that right?

A. That is correct.

Q. Who makes the pool car shipment for him?

A. There are instances where my own company might join with other companies whom we knew had granite going into that area, and we would consolidate. We would consign it to one of the dealers, first getting his approval. That isn't very satisfactory because that dealer is held responsible for the freight, not only of his own, but of his friendly competitors. Sometimes there is a question of accuracy of weight involved because we don't weigh work but have to estimate it, so that that type of consolidation had its drawbacks.

Q. Is there an association that assists you in the consolidation of these pool car shipments?

A. Yes.

[fol. 315] Q. What is the name of that association?

A. Barre Gill Consolidated Service.

Q. That is an organization made up of the various manufacturers in the Barre, Vermont area, is it not, a non-profit organization?

A. That is right.

Q. When you aggregate shipments or hold them, such as is portrayed on Exhibit No. 23, that is for the purpose of securing the carload rate, is it not, sir?

A. Yes, mainly.

Q. Being familiar with the Barre and Chelsea Railroad as an officer and a director, Barre and Chelsea Railroad furnishes a daily service, does it not?

A. A daily service?

Q. Yes, the Jones Brothers may ship less than carload every day, every working day, via the Barre and Chelsea Railroad?

A. Yes.

Q. Were you present at Milwaukee, Wisconsin at the previous hearing?

A. No.

Q. Have you read the transcript of the record?

A. Part of it.

Q. Do you know that the applicant proposes to depend upon eastbound movements in conjunction with the movement out of Vermont and, in some cases, deadhead from [fol. 316] points like Ohio, New York and Pennsylvania up to Barre, Vermont to pick up granite?

A. That is my understanding.

Q. Has the applicant promised your company that he would provide a daily service or a weekly service or a semi-monthly service?

A. That is my understanding that he would provide that service if granted the authority.

Exam. Roberts: Which of those that counsel mentioned?

The Witness: Daily to two or three days.

Exam. Roberts: Did he indicate to you that he would permanently station equipment at Barre, Vermont for your use?

The Witness: That is my understanding, that he would try to have available trucks in Barre.

By Mr. Lane:

Q. That wouldn't be very practical with the number of units that he operates, and the scope of the application,

to have three trucks stationed there, or one truck stationed there when he contemplates sixteen states westbound from the Vermont area and he has an enormous area in the reverse direction.

A. It is my understanding in talking with him that he plans to get a truckload a day out of the Barre, Vermont area.

Q. If he is granted the authority by the Interstate Commerce Commission, what did he promise to you with respect to shipment such as those shown on Exhibits No. 22, page 2, [fol. 317] going to Greeley, Colorado? Would you receive that shipment every week throughout the year, or did he intend to let that traffic accumulate at Barre until he accumulated a truckload?

A. I can't answer that.

Q. Do you know what the weight of those shipments was that were destined to Greeley, Colorado, the second item on page 2 of Exhibit No. 23, which is marked 1662-66070?

A. No I do not.

Q. If I asked the same question with respect to all of the other shipments with regard to weight, you do know the weights?

A. I do not know the weights.

Q. As a fair-minded man, you wouldn't expect Mr. Schaffer to take a one thousand pound shipment out to Greeley, Colorado with a single truck, a single shipment in one truck?

A. It is my understanding that he would have sufficient weight going out into that area so that he would get that shipment down to Greeley, Colorado.

Q. With regard to the shipment on the same page consigned to Rodriguez Brothers at San Antonio, Texas, did he indicate that he was going to run a truck every week down to the Texas area to take care of the Texas shipment?

A. That is my understanding.

Q. And the same question with respect to all other states, such as Arkansas and Montana?

A. That is my understanding.

[fol. 318] Q. In response to a question by the Examiner, I believe you stated one million approximately last year went via rail carload service and pool car service and about 600,000 pounds less than carload.

A. That is an approximation. I do not have the weights broken down between pool car and less than carload.

Q. On that 600,000 pounds of less than carload, some portion of it was transported by common carrier by motor, wasn't it?

A. No, the 1,600,000 pounds approximately were shipped into the territory involved in this discussion.

Q. Confined to this territory alone?

A. That is correct.

Q. These sixteen states?

A. Yes.

Exam. Roberts: Is that an average tonnage to that territory each year?

The Witness: I would say so.

By Mr. Lane:

Q. Your plant, as well as the other plants in the Barre, Vermont area, have been on strike for a number of weeks, has it not?

A. Yes.

Q. Twenty-two weeks, to be exact.

A. Five months and one week.

Q. The strike is just over now?

A. Yes.

[fol. 319] Q. Isn't it true that your company, as well as the granite manufacturers, are working on orders for Memorial Day of 1953?

A. That is correct.

Q. All of the shipments made by Jones Brothers are F.O.B., made on the basis of FOB, Barre, Vermont?

A. They are.

Q. Does your company have a traffic manager?

A. It is a pretty high sounding title. We have a shipping clerk who devotes his entire time to shipping.

Q. The shipping clerk will take instructions from any of your customers as to routing of traffic, will he not?

A. Yes.

Q. And he will honor that routing?

A. If possible, yes.

Q. The direct examination indicated you did use several carriers by motor vehicle from the Barre, Vermont area to New York and Pennsylvania.

A. New York and parts of Pennsylvania.

Q. Who are those carriers?

A. One is St. Johnsbury, and one is Churchill.

Q. Ray Churchill?

A. Yes, and one goes to Florida.

Q. And the first one is located in Barre, Vermont?

A. Yes.

Q. Have you used Gay's Express?

[fol. 320] A. I think on occasion we have.

Q. Have you used H. P. Welch Company from Barre to New York City?

A. I believe we have.

Q. On any occasion has your company tendered any granite shipments to any of those motor carriers for furtherance beyond the line, that is interline shipment, interchanging the shipment at Philadelphia or New York or any other point for ultimate delivery in any one of these sixteen destination states?

A. Not to my knowledge, is it possible. Answering you directly, no.

Q. They have never refused to handle the shipment?

A. Do I understand your question. Has my company ever shipped by common carrier, a motor carrier, from the City of Buffalo, New York west into some of the sixteen states?

Q. That is true, from Barre, Vermont via interline service, say via Barre, via St. Johnsbury Company or H. P. Welch Company of New York City or Albany, or any other point like that, for interchange with some western carriers.

A. No, not to my knowledge.

Q. Do you know whether or not there is such a service available?

A. I understand there is not such a service available.

Q. Did your company support an application of another carrier last June, wherein the St. Johnsbury Trucking Company and W. L. Mead Company provided a service [fol. 321] via Boston and Springfield, Massachusetts to points in the State of Ohio?

A. Not to my knowledge.

Q. Has your company ever sent a witness to Columbus, Ohio?

A. Not to my knowledge.

Q. Do you know whether or not St. Johnsbury Trucking Company has interchange arrangements with W. L. Mead Company?

A. I do not know that they have.

Exam. Roberts: How many plants do you have in the Barre, Vermont area, that Jones Brothers Company operates?

The Witness: The Jones Brothers Company has just one plant and we also own a quarry.

Exam. Roberts: Would any of these movements originate at the quarry?

The Witness: Yes, there would be some originating traffic at the quarry.

Exam. Roberts: Where is that located in relation to Barre, Vermont?

The Witness: It is just three miles away. It is in Granitsville, but is considered in the so-called Barre district or area.

Exam. Roberts: All of your operations would originate within an area of five miles of Barre, Vermont, is that right?

The Witness: That is right.

By Mr. Lane:

Q. Your company has been in business for many years, has it not?

[fol. 322] A. Seventy-two years.

Q. During all that period your company has grown, has it not, expanded its operations and become successful?

A. I would say so.

Q. And during all that time you used rail service?

A. That is correct.

Q. The Barre Chelsea Railroad derives better than fifty percent of its revenue from granite, does it not?

A. I understand so.

Q. It would be a serious blow to the Barre and Chelsea Railroad if it lost much of the present granite traffic?

A. It will be a serious blow to the Barre and Chelsea Railroad if we can't get more granite business into Barre.

Exam. Roberts: Into or out of it?

The Witness: Orders in and shipments out.

By Mr. Lane:

Q. Ordinarily, don't the dealers place their orders with Jones Brothers several months in advance of delivery?

A. That is not necessarily true, no. Many of our orders are placed daily and shipment requested as soon as possible.

Q. Will you turn to Exhibit No. 23, Mr. England?

A. Yes.

Q. On that first shipment which was finished on March 22, 1951 and was not shipped until May 11, 1951, that could have gone out on the 22nd of March, could it not, via rail less than carload?

[fol. 323] A. Yes.

Q. The reason it was held was to take advantage of the pool car rate.

A. Yes.

Q. And the same applies to every other shipment?

A. I believe so.

Q. So that where the two factors have to be weighed, transit time and the rate, isn't it true that the rate governs?

A. No, not necessarily. I think a dealer, if he possibly can, will instruct us to hold the shipment until it can get into a pool car because of the rate.

Q. Yes sir. That is customary, is it not?

A. Yes.

Q. Isn't it true, Mr. England, that so many of the dealers throughout the United States, the only shipping instructions that they give to your shipping department is, "Ship via cheapest route"?

A. They usually say, "Ship best route."

Exam. Roberts: Do the dealers pay the freight on these shipments?

The Witness: Yes.

By Mr. Lane:

Q. That is true of every shipment, the consignee pays the freight?

A. There are instances where a consolidated car in-
[fol. 324] volving several dealers, that we prepay the freight because of the objection of one of the consignee dealers to putting up the entire freight bill, but that is the exception to the rule.

Q. Ninety-nine and forty-four hundredths percent of the time, the shipments are sold FOB Barre, Vermont?

A. Yes.

Mr. Lane: That is all.

By Mr. Metzler:

Q. With reference to the one million pounds that go by rail, could you break that down into what is strictly carload and what is pool car shipment?

A. I am sorry I can't.

Q. I was wondering whether you could give me an approximation of the one million pounds that move annually. Was it one percent, ten percent, or fifty percent, just to get a general idea as to how you broke down the 1,600,000 figure into say 600,000 for less than carload.

A. I would say that perhaps forty percent might go carload, either straight carload or consolidated carload versus pool cars.

Q. So that 600,000 pounds is pool car, 400,000 is carload, and another 600,000 is less than carload. That is for your 1,600,000 pound figure.

Exam. Roberts: That is the one million pounds, is it not?

The Witness: Yes. That 600,000 was my estimate of straight less than carload. That forty percent of the one
[fol. 325] million straight carload——

By Mr. Metzler:

Q. Is 400,000 and 600,000 by pool car shipments?

A. Yes, and I qualify that by stating that it is an approximation.

Q. In reference to those shipments on Exhibit No. 23, you said you did not know the exact weight on each one, but are there thirty shipments there, and I was wondering about the approximate weight on each one.

A. I could not answer.

Q. Just like your preceding figure, could you give a rough guess? Would it be about one thousand pounds in each one?

A. One thousand pounds?

Q. I think you said Lee M. Bogle Company of Minneapolis, Minnesota, had two shipments. Would that be about one thousand pounds each?

A. I would sooner say it would be two thousand pounds.

Q. Just take the two thousand pounds as an approximate figure, then times thirty, which are the thirty instances listed there, that would be about sixty thousand pounds.

Exam. Roberts: Is that a question?

By Mr. Metzler:

Q. Then the balance of it or nine-tenths of them would be shipped reasonable promptly, would they not, if these are more or less the isolated instances that you picked out? [fol. 326] A. I did not ask for a thorough study. I asked for some isolated cases.

Q. I want to establish that point as to whether or not isolated cases—in reference to the testimony about damage you said there were instances of damage to goods. Do you recall whether any times when you filed a claim with a railroad, freight claim agent and you were not reimbursed in full for the loss or damage?

A. No. To the best of my knowledge we have always been fairly reimbursed.

Q. Often when fruits or produce is shipped, the needs are difficult to anticipate because in perishable commodities it is rather difficult to see what the needs are; but for your commodities, isn't that a fact that the needs of the dealer are relatively fixed or constant? Say in reference to monuments, they know approximately how many people are dying and it is not a variable or fluctuating figure, is that not true?

A. No, that is not true. To the contrary, dealers enter into high competition. Many people want their own custom made individual memorials, so that a good part of the volume is custom made work.

Q. But still the needs with the instances of the custom made requests are more of a fixed quantity than in a great many other instances.

Mr. Morken: The question is vague and indefinite.

[fol. 327] Exam. Roberts: I think it is more an argument than a question. Can you rephrase your question a little bit? I am not sure that the witness understands what you are driving at.

By Mr. Metzler:

Q. In brief, are the needs of the dealers reasonably fixed from season to season?

A. I don't believe so. A dealer's business may average somewhat but we find, oddly enough, in memorials that we have full time designers constantly making up new and different styling of memorials.

If you were to go in and buy one, chances are you would want your individual, some individual idea carried out.

Q. Getting back to the monuments, what percentage of the monuments are individualized and what percent are the regular stone?

A. I would say that seventy percent of the memorials that we build our customers wanted them custom made.

Exam. Roberts: They are what is known as the finished product?

The Witness: Yes.

Exam. Roberts: And the rough stone you would obtain from the quarry would go to the dealer for finishing?

The Witness: The dealer would finish it, that is correct.

Exam. Roberts: How much of that do you ship in rough compared to the finished product, percentage-wise?

[fol. 328] The Witness: Ten percent, maybe three or four carloads in this territory involved.

Exam. Roberts: Per year?

The Witness: Yes sir.

Exam. Roberts: That is the rough?

The Witness: Yes sir.

By Mr. Metzler:

Q. But there is still not an immediate need, like in a manufacturing business when a person is already dead, one more day or week doesn't make too much difference?

Exam. Roberts: I think we went into this at the prior hearing.

Mr. Morken: Three times.

Exam. Roberts: Let us not have more of that.

By Mr. Metzler:

Q. In reference to this interchange which Mr. Lane was talking about and the trucking service down to New York, what about the tie-up with this Granite City Transfer Company that entered an appearance at the June 13, 1952 hearing? Don't they also offer trucking service from the Midwest to the East?

A. To Vermont?

Q. No, down to New York.

A. I don't know. They don't to Vermont.

Q. I mean interchange could be made with the existing carriers down to New York and that one to the West.

Exam. Roberts: Are you asking or testifying?

[fol. 329] Mr. Metzler: I am asking.

By Mr. Metzler:

Q. Could it not be made?

A. Not to my knowledge.

Q. You said in your direct examination that one of the advantages of the applicant's services are that, and I quote, "You get lower rates from the trucking service". Could you elaborate on that?

A. Did I say that?

Q. I believe you did.

A. Will you rephrase your question, please?

Q. I was wondering what you meant by the statement that lower rates from the trucking service were available from the other centers.

A. I intended to say that we have found that dealers will buy from other centers, that they will truck granite to

them either from Minnesota or from Elberton versus the high less than carload rate and length of service from Barre, Vermont.

Q. What do you mean by the high rate?

A. The high less than carload rate.

Q. So then the applicant would be given a lower rate, is that it, in contrast to the existing rail rate?

A. I don't happen to know what the applicant's rates will be, but I do understand that truck rates from Elberton and from Minnesota happen to be lower than less than carload rates from Elberton and from Minnesota.

[fol. 330] Q. By an chance did you read the December Readers Digest, December 1952 Readers Digest?

A. I think I read part of it.

Q. Did you see this article on page 41 entitled "Huge Trucks Do More Than the Share of Damage, Pay Less Than Their Share of the Cost"?

Mr. Morken: We are referring to something that is not in evidence and which is silly, and I think counsel should be reprimanded for even trying to go off on a tangent that way.

Exam. Roberts: I sustain the objection.

Mr. Metzler: I would like to reply to counsel's objection. This involves long distance heavy trucking.

Exam. Roberts: I made my ruling. If you wish to rephrase your question you may, but I don't think this is relevant to the situation here.

Mr. Metzler: That is all.

Redirect examination.

By Mr. Morken:

Q. You testified, as I recall on cross-examination, that you did not know what rate the applicant would charge and I wanted to ask you this; are you here on the basis of the rates? In other words, is your support to more or less cut rates? Is that what you want in this proceeding?

Mr. Lane: I object. The testimony is very clear. I think Mr. England is a very competent witness and he stated

very clearly and definitely the purpose of his support of this application.

[fol. 331] Mr. Morken: Are you satisfied that he is not here for rates?

Exam. Roberts: I think it is clear as to what his comparable rates are, based on the rates out of Elberton and points in Minnesota, is that not so?

The witness: That is correct, but I have appeared before the railroads trying to point out inequalities of rates and trying to get them to change and modify them. I am not down here on rates as such.

Exam. Roberts: I think that answers your question, Mr. Morken.

By Mr. Morken:

Q. You mentioned also on cross-examination that you had read the transcript, at least in part. Did you read the testimony of any of the monument dealers in the Midwest area who testified at the prior hearing in St. Paul?

A. I read the testimony of Mr. Joe Osborne of Osborne, Peterson, Incorporated, and Harry McCarty, of Hutchinson, Kansas.

Q. Do you supply those men?

A. Yes.

Q. And have you done so for quite a few years?

A. Yes.

Q. As far as the testimony relative to their operations and their needs and their service, are you able to classify [fol. 332] them as one of your customers? Are they a special, typical and average or unusual?

Mr. Lane: I object to the question. I don't know what he is talking about.

Mr. Morken: I will rephrase it.

By Mr. Morken:

Q. Can you tell us whether Mr. Osborne and Mr. McCarty from Hutchinson, Kansas are average or typical dealers?

A. I would say that they are very typical. Osborne does some manufacturing which throws him into a retail

and manufacturing dealer. McCarty does very little manufacturing and as I read the testimony of those two dealers I feel it is very typical of the problem facing dealers out in those sixteen states.

Q. The list of dealers then on Exhibit No. 22, as far as your company is concerned, is generally similar to Mr. McCarty and Mr. Osborne?

A. Yes.

Q. And one more question: Do these customers look to the Jones Brothers to get them a transportation service to deliver their granite?

A. They have been somewhat critical of us for not trying to help out along those lines.

Q. Even though they pay the freight, they look to you to get the goods to them?

A. That is right.

[fol. 333] Mr. Morken: That is all.

Recross examination.

By Mr. Lane:

Q. Isn't it true that the granite from Elberton, Georgia is an inferior grade, far inferior to that manufactured in the Barre, Vermont area?

A. We believe it so, yes.

Q. Isn't the same thing true of the Minnesota granite?

A. We believe so.

Mr. Lane: That is all. Thank you very much.

Exam. Roberts: You may be excused.

(Witness excused.)

Mr. Morken: I will offer Applicant's Exhibit 22 and 23 in evidence.

Mr. Lane: No objection.

Exam. Roberts: Hearing no objection, they will be received in evidence.

(Applicant's Exhibits No. 22 and 23, Witness England, were received in evidence.)

Exam. Roberts: Call your next witness, Mr. Morken.

Mr. Morken: Mr. Examiner, Mr. Wright, the next witness, has a prepared statement. I can ask him a few foundation questions. His prepared statement is brief and to the point. I have read it. It will simplify matters and speed it up if he is permitted to read the statement.

I can also tell you ahead of time that it is generally [fol. 334] similar to the testimony of other witnesses. We do not have copies of it to pass around.

Mr. Lane: May we examine the one copy?

Exam. Roberts: I think the opposing counsel should be permitted to look at it to determine whether there is any argumentative matter to cross-examine on. We will go off the record for that purpose.

(Discussion off the record.)

Nelson P. Wright was sworn and testified as follows:

Direct examination.

By Mr. Morken:

Q. Will you state your name, please?
A. Nelson P. Wright.
Q. Where do you live?
A. Barre, Vermont.
Q. By whom are you employed?
A. By Rock of Ages Corporation.
Q. What is your position?
A. Sales manager.

Q. Do your duties as sales manager involve the supervision or direction of the shipments of the Rock of Ages people from Vermont to the sixteen Midwest states involved in this application?

A. No, not as such. We have a traffic clerk who handles that but it falls on my department and shoulders to pacify [fol. 335] some of these dealers in part when they loudly complain about late delivery, particularly on less than carload shipments.

Q. As far as the service that you now have for your

company on monuments of granite from the Vermont area to the Midwest, are you familiar with the transportation problem of the Rock of Ages Corporation?

A. Definitely.

Q. Will you describe to us briefly if you care to, tell us what the Rock of Ages Company is, what they do and their size, if you can?

A. Our company is a quarrier of granite and also a manufacturer of finished monuments and markers that our distributors, throughout all of the states of the Union, handle. We do not ship any rough stone or raw material from our quarry outside of the Barre, Vermont district, but we do ship a large volume of finished memorials into forty-six of the forty-eight states.

Q. You are familiar generally with the proposal here of the applicant and what he wants to institute in so far as the trucking service and the area he wants to serve?

A. Yes I am.

Q. In preparing to come here, did you summarize your testimony in a written statement that you desire to read into the record at this time?

A. I did.

Q. Will you go ahead and read your statement?

[fol. 336] A. We are endeavoring to build up our distribution to dealers in every state, particularly in the sixteen states on the attached list as they have a high agricultural population. We find that the farmer prospect with practically a guaranteed income is our best market.

We are handicapped considerably in obtaining new dealers in these states because of these difficulties.

Currently we have one hundred sixty-eight in these sixteen states. Forty-five buy in carload quantities. This presents no problem. One hundred twenty-three, or seventy-three percent, do buy in less than carload quantities. Less than carload shipments are not satisfactory for the following reasons:

Delay from time merchandise is shipped until delivered to destination.

Damage while in transit. Oftentimes the crating is practically destroyed by rough handling. We pay particular attention to crating to prevent damage and have the repu-

tation of having one of the best crating facilities in the industry.

When possible, pool car shipments are made but these are not satisfactory for the following reasons:

It is difficult for one dealer to whom the merchandise would be consigned to pay the freight on the entire car as he often experiences difficulty in obtaining his money promptly from the other participating dealers. It is diffi- [fol. 337] cult for him to perform the task of unloading and reforwarding to other dealers.

During peak seasons such as Memorial Day, All Souls Day and Armistice Day, neither less than carload or pool car shipments are satisfactory as it requires two weeks and sometimes longer for this type of shipment to reach the dealer. Delays in transit and damages while in transit, particularly on less than carload shipments, work against the dealer's making erection on time in the cemetery. On pool cars the dealer often does not have railroad siding facilities available and considerable rehandling is required.

Competitive areas such as the South, principally in Georgia, and our Western competitors in Milbank, South Dakota, and the St. Cloud, Minnesota area, have motor carrier services which greatly facilitates delivery on orders less than carload. Currently there are no authorized motor distributors available to Barre manufacturers and the dealers in the sixteen states. Schaffer Transportation Company could bring Western granite in less than carload quantities to the East and the Barre district could use those facilities for shipments going West into the sixteen states mentioned.

It is not our thought to eliminate railroads; in the long haul an authorized motor carrier for quantities less than carload would be beneficial to the railroad as we could build the dealer into a carload buyer. A motor carrier would not [fol. 338] eliminate pool cars to any extent but two or more truckloads going West into these sixteen states out of the Barre district would place us in a competitive position because of quicker and better service as it would mean door to door delivery for our dealers.

I should like to qualify that statement in the last sentence where I said "two or more truckloads going West".

I have not put in the time. I would say that would be per week.

Q. Have you finished the statement?

A. Yes.

Q. If the service is authorized, you contemplate the Rock of Ages people will have approximately two truckloads a week available?

A. Two or more truckloads on less than carload shipments.

Q. What would be the total poundage per shipment or per truckload?

A. Some where between twenty-four thousand and thirty thousand pounds.

Q. You have heard the previous witness testify, have you not?

A. Yes.

Q. Is the operation of the Rock of Ages Company, manufacturing and distributing and so on generally similar to that of the Jones Brothers Company?

A. Yes, approximately.

Q. Your experience in matters of transportation from [fol. 339] the Barre, Vermont area to the West, have they been the same as those of the Jones Brothers?

A. Yes.

Q. Are you making truck shipments at the present time to other points not involved in this application?

A. Truck shipments to places other than the sixteen state area, yes. Apparently we are making truck shipments to other places through authorized motor carriers into New England, New Jersey, Pennsylvania, somewhere around Philadelphia. To my knowledge, there is no trucking service beyond that, and then a line directly west of Philadelphia into Pittsburgh and north to Buffalo. Beyond that, to my knowledge, there is no authorized motor carrier from the State of Ohio on.

Q. When you crate your product to ship by truck at the present time, is it a different crating job than you do when it will be shipped by rail?

A. No, we crate them the same.

Q. You crate them the same way?

A. Yes.

Exam. Roberts: How do these shipments move by truck? Are they moved on an ordinary van type trailer or a lo low boy trailer?

The Witness: As I understand it, they are moved on what I call a platform trailer type.

Exam. Roberts: Flat bed equipment?

[fol. 340] The Witness: Yes.

Exam. Roberts: They are not particularly of the low boy size that are set low on the ground, as the compared to the height of the ordinary van?

The Witness: That is right, the covered van or truck covers it just as an impediment when they try to unload it.

Exam. Roberts: Do you use a tarpaulin to cover the granite en route, do you know?

The Witness: Yes, I notice most of the carriers carry that, one that can be whipped on and off by hand.

Exam. Roberts: They don't require particular loading or unloading facilities, do they?

The Witness: We attempted to ship a piece of granite down to the State of Alabama by a carrier who had not ever carried granite. In fact we sought out several of them and they turned us down. The loading and unloading of granite and the packing of it takes an experienced man, so that the load doesn't shift and it arrives in safe condition.

Exam. Roberts: The carrier doesn't have that responsibility, does it, of loading and unloading?

The Witness: Yes, to a degree the driver of the truck will tell them how to do it, also help in loading and unloading the truck.

Exam. Roberts: The truck itself doesn't require winches, or to be equipped with winches?

[fol. 341] The Witness: Not in every case. There are a few that way, but very few.

Exam. Roberts: Do you use cranes for the loading of your vehicles?

The Witness: Yes.

Exam. Roberts: They are your own at the plant?

The Witness: Yes.

Exam. Roberts: How many of these plants do you have and where are they located with respect to Barre, Vermont?

The Witness: We have five plants. But two really are used for shipments to dealers thought and the one plant is in Montpelier, Vermont and the main plant is in Northfield, Vermont, which is about twenty-two miles from Barre, Vermont, and Montpelier is about seven miles away, and the other three plants are for the purpose of polishing, sawing, and processing the granite delivered to the large two finishing plants.

Exam. Roberts: You would never originate a shipment at those places for interstate shipment?

The Witness: No, just at Northfield and the one at Montpelier.

By Mr. Morken:

Q. You stated that the Rock of Ages people do not ship rough granite into these sixteen states. Do you recall that statement.

A. Yes.

Q. Are the E. L. Smith Company or the Whittemore and [fol. 342] Morris Company connected with the Rock of Ages?

A. They are a division of ours.

Q. Do they ship granite to the midwestern area?

A. Yes, and slabs.

Q. Would those companies use the proposed service?

A. No. On loads like that, all of those would be of such dimensions and size that they would go carload.

Mr. Morken: May we have this exhibit marked for identification?

Exam. Roberts: It will be marked Exhibit No. 24.

(Applicant's Exhibit No. 24, Witness Wright, was marked for identification.)

By Mr. Morken:

Q. Will you refer to what has been marked as Exhibit No. 24, and it consists, I believe, of eleven or twelve pages. Will you identify it, please?

A. This first page is the number of dealers we have in each one of the sixteen states and it lists them as the move-

ment by carload quantity and the number who buy less than carload or pool car delivery. And the weight we have here is the three year yearly average of the years 1949, 1950, and 1951. These are taken from our official records kept in our home office.

Q. This was prepared at your direction?

A. Yes.

Q. Again, it would mean that your company ships a little [fol. 343] over five million pounds a year from the Barre, Vermont area into these sixteen midwestern states?

A. Yes, and that is our finished goods only. The shipments of rough stock or slabs going from the other quarrying divisions would not enter into that.

Q. The balance of the exhibit is the names of the different dealers in the different states involved as they are summarized on the first page.

A. That is right, listed as carload and less than carload dealers.

Mr. Morken: I will offer Exhibit No. 24 in evidence.

Mr. Lane: No objection.

Exam. Roberts: It will be received in evidence.

(Applicant's Exhibit No. 24, Witness Wright, received in evidence.)

By Mr. Morken:

Q. Are you familiar, at least generally, with the testimony of the various monument dealers in the midwestern area who testified in this hearing in St. Paul?

A. Yes, I have read that report, particularly about the dealers Joe Osborne of Osborne, Peterson, Norris E. Walther of Fremont, Nebraska, Ed Hunstad of Aberdeen, South Dakota, and Paul Stevenson, of Moberly, Missour.

Q. Does your company sell its products to those people at the present time?

A. We sell all of them except Mr. Stevenson of Moberly, Missouri.

[fol. 344] Q. And those men who testified in this record, are they typical of the dealers whom you listed in Exhibit No. 24 as your customers?

A. Yes, Osborne is probably an outstanding dealer and the other two would be one medium and the other fair. So if you average the three of them you have a good cross section of all of the dealers we have listed here in the sixteen area and their remarks, I don't happen to have them with me, but if we would have letters from all the dealers, and boil them down, we would have the same thought and feeling as expressed by the three dealers.

Mr. Lane: I move to strike the witness's answer.

Exam. Roberts: Overrule the objection. Let it stand.

By Mr. Morken:

Q. Do these dealers look to the Rock of Ages people to get the transportation for the granite they buy?

A. Yes.

Q. Has the Rock of Ages Company had this matter of truck transportation from the Vermont area to the Midwest under consideration prior to this application?

A. Yes, we have had a number of meetings discussing various ways we could overcome our problem, getting connections and better service to our dealers, particularly in that area. Nothing has been definitely arrived at. We are hopeful that Schaffer Trucking will obtain authorization to do what he has applied for.

[fol. 345] Q. If this application is denied, will the Rock of Ages people still be interested in motor transportation?

A. We definitely would if we are to hold our market, what we already have, and to develop it, not to get all the business but what we would say our normal share of the business is.

Q. Would the institution of this service mean any increased business for you?

A. Yes, definitely I think it would.

Q. Why is that?

A. We would be able to get the merchandise to the dealer quicker and he would not have to order in quantities that would tie up too much capital. We have got a number of small dealers out there who can be built into larger dealers, but there are a number of them who currently, because of the price of the merchandise, just cannot carry a representa-

tive group of monuments that give a customer the choice of size and design, and therefore they need more frequent service out of Barre, Vermont.

Q. I notice you only have one dealer in the State of North Dakota. Do you have salesmen who work the State of North Dakota?

A. Yes, he is located in Seattle, Washington.

Q. Is there more than one monument dealer in North Dakota?

A. Yes, my guess would be about twelve dealers.

Q. It is a rather sparsely settled state, is it not?

[fol. 346] A. Yes.

Q. If your salesman contacts one of these other dealers that you don't sell to at the present time, is there any average size that these orders would get when you are trying to get some fellow to start out handling your line of merchandise?

A. Average size of the order or average size of the monument?

Q. Does he jump right in and buy a big mausoleum?

A. No he starts out with probably half a dozen monuments and a dozen markers.

Q. What would be the size of that order?

A. Oh, it would average around $2,000.

Q. In pounds, how big a shipment would it be?

A. Probably six thousand or eight thousand pounds.

Q. Would the availability of this proposed service in getting that man set up with this first order assist you?

A. Yes it would. As it is now, he would have to wait a considerable length of time in order to get a pool car, enough weight for a pool car to go out to that particular area, if we are talking about North Dakota.

I think where we have the biggest chance for expansion is obviously not in a sparsely settled state like North Dakota, but down in Missouri, Oklahoma, Texas, Arkansas, Nebraska, Iowa, Minnesota, those areas.

Q. You have the impression this transportation will permit an expansion of your business?

[fol. 347] A. It definitely would.

Mr. Morken: You may inquire.

Exam. Roberts: Cross-examination, Mr. Lane.

Cross-examination.

By Mr. Lane:

Q. Mr. Wright, how often has your company shipped pool car shipments on an average from Barre, Vermont?

A. I have got nothing here with me, so I will have to give an educated guess on that. It would average from a week to thirty days.

Q. And you hold those shipments for pool car movement to get the advantage of the pool car rate?

A. Yes.

Q. You are able to ship from Barre, Verment via the Barre and Chelsea Railroad and via the Central of Vermont Railroad, is that correct?

A. Yes.

Q. And both companies provide a daily service, do they not?

A. Well, frequently we have to—if you pin me down to say how many days do we have to wait for a car, I don't know, except what I hear the traffic clerk tell me that it is tough getting cars, that may be two or three days or a week.

Q. I want just your actual knowledge. With respect to the motor carriers, your company is using at the present time, I understood you to say that you are shipping down as far as Philadelphia and as far west as Buffalo, New York, is that correct?

[fol. 348] A. Yes.

Q. What carriers are you using to Buffalo?

A. I believe it is Churchill.

Q. Ray Churchill?

A. Yes.

Q. Did you ever request Ray Churchill to interline your shipments at Buffalo with another motor carrier providing service to the sixteen states involved in this application?

A. I cannot give you a specific instance, but the pressure that has been on us, I will transfer that request to the traffic clerk and ask him is it possiblt to get motor carrier delivery beyond Buffalo and the answer that has always come back was no.

Q. You are familiar with the territory west of Buffalo, having traveled there?

A. Yes.

Q. And you know of your own knowledge that there are motor carriers transporting general commodities, including granite, west of Buffalo?

A. No I don't know, not granite.

Q. Granite may be transported in any conventional motor vehicle, may it not, even though it is a van truck or it makes it easier to have a semi-truck with a low side or a flat bed truck?

[fol. 349] A. I suppose in theory that is correct, but we have not been able to get anybody to handle it. It is too bulky and too heavy.

Q. Do you know of any motor carrier who has refused to transport your shipment west of Buffalo?

A. No, I can't say I do.

Q. When you are shipping a monument, it may be transported in box car, isn't that so?

A. Transported in a box car?

Q. Yes.

A. Yes.

Q. And larger shipments are transported in open top equipment, is that correct?

A. In cars?

Q. Yes.

A. Yes.

Q. And the shipments that you do transport by motor vehicle to such points as Philadelphia, Buffalo, points in between, when the truck backs up to a shipping platform your men load the truck, do they not?

A. Yes.

Q. And at the other end the monument dealer supervises the unloading, isn't that correct? He has the crane and the other facilities, the bars or whatever is necessary.

A. They may not have a crane but they have facilities, [fol. 350] and the driver helps them.

Q. If the granite is properly unloaded, there is no skill necessary for the driver except to drive his vehicle carefully, isn't that so?

A. For the loading, that would be true; for the unloading,

the driver would have to help the dealer. Many dealers don't have cranes. They would have to use blocks or skids rails. You have the monuments weighing one thousand pounds on up to one ton; two tons or five tons. That requires a man with some knowledge of how to handle that weight.

Q. Your knowledge is similar to that of Mr. England of Jones Brothers in that all the granite is sold FOB Barre, Vermont?

A. Yes.

Q. Regardless of whether you would pick out the carrier or the means of transportation, your shipping clerk will honor the routing instructions of any one of your customers, is that so?

A. Yes.

Q. In your prepared statement you had reference to competitive areas, such as the South, which is Georgia and also the St. Cloud area. You have testified that they have motor carrier service which greatly facilitates their orders. What motor carriers do they have? Let us start out with Elberton, Georgia carriers.

A The only one I know of there is a fellow by the name of [fol. 351] Ratliff. He leases the trucks, or the trucks are leased to him, I am not too clear on that.

Q. Do you know whether he operates out of Elberton?

A. As I understand in that area.

Q. Do you know what type of service he provides, whether it is once a week, once a month, or whether he operates under lease of his vehicles?

A. I don't know the details except what the dealers tell me.

Q. I am looking for your own knowledge on that question.

A. Then I really don't know.

Q. Would you answer me the same, that you don't know, if I asked you the same question with regard to Milbank, South Dakota and St. Cloud, Minnesota?

A. If you asked me do I know the specific name, I don't know. All I know is what the dealer tells me.

Q. Prior to your appearance at this hearing, did you discuss the proposed service with Mr. Schaffer?

A. Yes, we had letters back and forth.

Q. And you examined the copy of the transcript of the previous hearing at St. Paul?

A. No I did not examine it, only in part, about what the dealers had to say.

Q. Who furnished you with a copy of that transcript?

A. Yesterday I got a chance to glance through it. I certainly didn't read it.

[fol. 352] Q. If you hold shipments for pool car movement from a week to thirty days where you have the opportunity to ship daily via either the Central of Vermont Railroad or the Barre and Chelsea Railroad, is the decision to hold for the pool car movement brought about by the cheaper pool car rate and the saving to the dealer?

A. In part, if you ship it less than carload you have to pay the higher rate and the pool car is more economical and of course a solid car is more economical. But you don't have enough weight going to the dealers in a specific area. They don't want—I should say they don't order this week and it is shipped a month later. They order this week and want it shipped next week. It may take you a while to get those orders accumulated to get enough weight for a pool car.

Q. Maybe I can shorten this up. If this applicant, Mr. Schaffer, should receive the authority that he seeks, Mr. Wright, from the Commission, and he publishes a tariff on a parity or higher than the present less than carload rail rate, you can't give him any business, can you?

A. Frankly, a dealer can control that. Our dealers seem to be mostly concerned with getting quicker delivery.

Q. If they order quicker delivery, do you hold shipments for thirty days when you can ship every day in less than carload lots?

A. If you ship in less than carload delivery, it will cost a [fol. 353] lot more than it will in pool car.

Q. Did Mr. Schaffer give you any assurance as to what he would provide if this authority was granted, that is, frequency of service?

Mr. Morken: I don't like to interrupt but I will have to. I have been waiting for a specific question to make the specific objection that is assuming facts not in evidence. My compliments to Mr. Lane. He has done a beautiful job of staying away from it. I gather, from what Mr. Wright said,

that he isn't familiar with what is in the record, and I don't think Mr. Lane is. But I think it is in the record and the way Mr. Wright told about his present tariffs and split delivery, we are not basing anything here on less than carload rates, and the whole proposition is in the record. I think you have either confused yourself or confused the witness because of not having that knowledge of it.

Mr. Lane: I read the transcript from cover to cover and I am thoroughly familiar with what the applicant proposes to do. I am also familiar with numerous other applications where the authority was sought to transport granite. What I am trying to develop from this witness is whether or not he has knowledge of the service which would be rendered, or whether the existing service is superior to that offered by Schaffer.

Exam. Roberts: I think the question could be more direct as to whether the applicant proposes to charge a rate [fol. 354] higher or lower than the less than carload rate or comparable to the pool car rate. I think you can phrase that question a little more directly in that respect. I will overrule your objection.

Mr. Lane: Shall I rephrase the question?

Exam. Roberts: Yes, proceed.

By Mr. Lane:

Q. If Mr. Schaffer published a tariff with the higher rate level than the existing less than carload rail rate, you couldn't give him your business, could you?

A. I don't think so.

Q. Mr. Wright, were you present throughout the hearing today?

A. Yes.

Q. Did you hear all the testimony of Mr. Schaffer?

A. Yes.

Q. Did you hear him testify about the deadheading of his vehicles from destinations where he would bring the stone eastbound?

A. Yes.

Q. And then he would run empty up to the Barre, Vermont area?

A. Yes.

Q. And you are familiar with the eastbound territory that he is looking for?

A. Vermont and——

Q. I am sorry, Mr. Wright, I mean the other direction. This applicant is seeking authority from points in Grant County, South Dakota.

[fol. 355] A. From East to West?

Q. From West to East?

A. From West to East?

Q. Yes. Do you know that he was looking for a two way haul?

A. Yes, definitely.

Q. Do you know he was looking for authority, for example, from Grant County, South Dakota down to the State of Louisiana?

A. I don't know if I knew—yes, yes.

Q. As a practical man, Mr. Wright, do you think that this carrier would take one thousand pounds from the Jones Brothers destined to Oklahoma, one thousand pounds from your company to the State of Arkansas, one thousand pounds from another manufacturer to a point in West Texas, and another one thousand pounds to a point in Louisiana, and be able to survive in making all those deliveries?

A. No, it wouldn't be practical and your question, while good, I don't think there would be instances where we would have shipments in such scattered points.

Q. You have indicated you have customers in all these states, have you not?

A. Yes.

Q. You have twenty-two dealers in Texas?

A. Yes.

Q. In order for you to accumulate a sufficient volume for Mr. Schaffer to make a truckload, he might have to wait [fol. 356] quite a while, isn't that so?

A. I think if you will look at the weight that we have and the number of dealers, and there are twenty-one dealers in Texas who are less than carload dealers and eight dealers who are carload dealers, making a total of twenty-nine. If you eliminate the carload dealers, take the twenty-one dealers, and take out the carload weight, there are eight

carloads at forty thousand pounds each and you have considerable weight available every thirty or sixty days going in there.

Q. Shipments once every two months?

A. About every month.

Mr. Lane: That is all I have.

By Mr. Metzler:

Q. You were in the hearing room and you heard Mr. England's testimony. Would your answers be substantially similar to Mr. England's answers.

A. Yes.

Mr. Metzler: That is all.

Redirect examination.

By Mr. Morken:

Q. You have discussed this matter with Mr. Schaffer, his proposal?

A. Yes.

Q. In that direction, are you familiar in a general way with how he is now operating in hauling granite?

A. In a general way, yes.

Q. If he is able to establish a similar service for you from [fol. 357] Vermont, is that the type of service you seek?

A. That he is performing for our western competitors?

Q. Yes.

A. Definitely.

Q. What he proposes is nothing that is unusual or difficult. It is being done every day?

A. That is right.

Mr. Morken: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: We will adjourn at this time and come back at 1:30 this afternoon.

(Whereupon, at 12:16 p. m., a recess was taken until 1:30 p. m. of the same day.)

[fol. 358] AFTERNOON SESSION

1:30 p. m.

Exam. Roberts: Come to order, gentlemen.

Call your next witness, Mr. Morken.

Mr. Morken: I call Mr. McBride.

Exam. Roberts: You were previously sworn at the prior hearing, were you not, sir?

Mr. McBride: Yes sir, I was.

RICHARD T. MCBRIDE having previously been sworn, testified further as follows:

Direct examination.

By Mr. Morken:

Q. You are the same Richard T. McBride who testified at a proceeding in St. Paul, Minnesota, last June, is that correct?

A. Yes.

Q. At that hearing, Mr. McBride, there were certain limits on the extent of your testimony, due to objections to your qualifications and the status that you held with your association. Do you recall that?

A. Yes I do.

Q. Subsequent to that hearing, have you taken the matter of this application up with your association and with some of its members?

A. Yes I have.

Q. Have you had any meeting?

A. We have had one meeting.

[fol. 359] Q. In addition to the meeting, have you talked the matter over with some of the individual members of your association who were not present at the meeting?

A. Yes I have.

Q. As a result of that meeting and your talks with some of your members, were you specifically authorized and directed to appear again at this further hearing and testify in support of this application on behalf of not only your association but the individual members?

A. Yes.

Mr. Lane: I object, Mr. Examiner. There is a proper way to qualify the witness. If he has written authorization——

Mr. Morken: I am coming to that part, Mr. Lane. I am not through with qualifying him.

Exam. Roberts: Let us see what he witness has to say.

By Mr. Morken:

Q. You have written authorization?

A. Yes.

Q. Will you describe, and without testifying as to anything relative to the application, will you tell the examiner about the meeting, how this proposal was laid out to the members, and specifically what members authorized you, in writing, to appear on their behalf? And one more question, do you have those authorizations with you?

A. Yes.

Q. And they are available for anyone who wants to see them?

[fol. 360] A. Yes.

Q. Will you tell what happened at this meeting and what was discussed and what you told the members relative to this proposal?

Mr. Lane: I object.

Exam. Roberts: What is the ground for your objection?

Mr. Lane: It is hearsay. I don't care what these people said. They are not here for cross-examination and I don't care what the subject matter was.

Exam. Roberts: He called in the witness and hasn't gone into any need for the service at this time.

Mr. Lane: May the question be read back?

Exam. Roberts: Will you read the question back, Mr. Reporter?

(The last question was read by the reporter.)

Mr. Lane: I think you will appreciate the reason for my objection.

Exam. Roberts: What proposal are you speaking of?

By Mr. Morken:

Q. What I want to know is; when the meeting was, who was present, and what you told them as far as this proposal is concerned. In other words, what you asked them to do or what they told you to do. Will you state when the meeting was held and who was there?

A. The meeting was on November 13, 1952 and the following granite manufacturing firms had officers present: [fol. 361] Grearson and Lane, Barre, Vermont; the Lawson Granite Company, Incorporated, Barre, Vermont; E. J. Batchelder Company, Incorporated, Barre, Vermont; Hoyt and Milne, Incorporated, Barre, Vermont; Buttura and Sons, Barre, Vermont; the Acme Granite Company, Barre, Vermont; Cook, Watkins and Patch, Incorporated, Barre, Vermont; Johnson and Gustafson, Barre, Vermont; The Barre Hickey Mill, Barre, Vermont; and the Adams Granite Company, Barre, Vermont.

At the November 13 meeting, I described to those members present the purpose of this hearing which I told them was to be held on December 2, 1952 in Washington. I described briefly the background of the previous hearing in St. Paul and told them that a continued hearing was to be held. At that meeting, Mr. Heber England, the president of Jones Brothers Company, and Mr. Nelson Wright, sales manager of the Rock of Ages Corporation, described the past experiences of their companies regarding rail shipment to the Midwest and to the Southwest.

At that meeting both Mr. England and Mr. Wright also described to the members present why their companies felt the proposed service by the Schaffer Transportation Company was and is essential to the continued sale of the Barre, Vermont granite in the sixteen state area.

At the conclusion of the meeting I asked the members that if the situation regarding rail service and the proposed motor carrier service, if the situation as described by Mr. [fol. 362] England and Mr. Wright applied also to their companies, and all present at the meeting indicated, by raising their hands, that the situation as described by Mr. England and Mr. Wright was approximately the same.

Mr. Lane: I will move to strike the last two sentences.

Exam. Roberts: Your motion will be denied. Proceed.

Mr. Lane: May I set forth the reasons for my objection?

Exam. Roberts: Yes.

Mr. Lane: On the ground of hearsay, the people of whom the witness speaks are not present in this hearing room for cross-examination.

Exam. Roberts: I believe Mr. McBride is trying to lay the foundation for something here and I am interested in finding out what it is. I will permit him to proceed.

The Witness: The form I have in front of me and I will read what I consider the pertinent parts for a moment.

Mr. Lane: If you are referring to a written document, I would like to examine it.

Exam. Roberts: I would like you to give your own knowledge. I don't know what that document is, and counsel has a right to investigate it and look at it.

Mr. Morken: If it is going to be investigated, I am willing to have one of them marked for identification as an exhibit and offered in the record so that, even though it is rejected, it will remain a part of the record as a rejected [fol. 363] exhibit.

Exam. Roberts: What I am trying to find out is just what Mr. McBride's position is as a witness and whom he proposes to represent. I don't think the record is clear on that. I think it was at the prior hearing and if there is any difference, I am willing to hear it. If it is the same position he took, I think we made the ruling on that.

The Witness: At the conclusion of this statement I think that might answer it.

The final paragraph of this form and the others states:

"I hereby designate R. T. McBride, Field Representative of the Barre Granite Association, to officially act as a representative of the Grearson and Lane Company and to testify in my behalf at any Interstate Commerce Commission hearing involving the present application of Schaffer Transportation Company."

Mr. Lane: Now may I examine the document?

Exam. Roberts: You may, sir.

Mr. Lane: Have you seen a copy of this, Mr. Examiner?

Exam. Roberts No I have not.

Mr. Lane: With regard to these alleged authorizations.

they are not notarized. There is not any means by which I can determine whether these are the signatures of these parties. This is a device to circumvent the rules of practice with regard to depositions.

[fol. 364] I requested a hearing in Montpelier, Vermont on this particular case. Counsel for applicant objected on the ground that under the rules of practice, the rail carriers could petition for leave to take depositions. In effect, this is an easy way of doing what the rules regarding the taking of depositions calls for. Only it doesn't conform to the rules. In effect, instead of having these witnesses come from Barre, Vermont to Washington, D. C. to testify, they merely give this man a letter and that is all it is, a letter. We had no chance to cross-examine these various witnesses.

By means of these letters, if Mr. McBride is successful in getting them into the record, it puts us in a position of not being able to find out the reasons for the support of these companies of this application. We were obliged to bring witnesses from St. Albans, Vermont and Rutland, Vermont to this proceeding here. If such a practice were permitted, it would be a simple thing to get letters from people all over the United States, particularly from the sixteen states involved in this application.

I object to any testimony with respect to these so-called authorizations going into this record.

Exam. Roberts: What testimony do you purport to give that you have not already given at the prior hearing with regard to these manufacturers who, I assume, are members of your trade association?

[fol. 365] The Witness: Primarily the fact that being present at this meeting as they were and hearing the statement by Mr. Wright, which incidentally is the same statement that is now on the record here, I believe he read to the members of that meeting, and Mr. England's were pretty much the same as the testimony he has given here today and I wish to testify that the other eighteen companies which I am representing assert that their position is the same and that this is not an isolated instance of two companies needing this service, but that actually possibly twenty-five to thirty companies in our district need this

service. I happen to have with me authorizations from eighteen of them.

Exam Roberts: Is that in substance your testimony with regard to it?

The Witness: Yes.

Exam. Roberts: Do you have any further questions, Mr. Morken?

Mr. Morken: Yes. I don't know where we stand with Mr. McBride but I think some of Mr. Lane's statements should be answered briefly.

First, at the last hearing, Mr. McBride was permitted to testify only about the movements that the Barre Guild made themselves in pool car shipments. He endeavored to say that they had the shipments, and on the objection that he had not discussed it with them personally and they [fol. 366] were not apprised of it and had not specifically authorized him to appear and testify, we went back and got just exactly waht he testified to. He has talked with members of his association and they discussed the proposal. He has the proposal here on which there is no testimony. There is nothing here that is hearsay. It is simply and purely an authorization. There is nothing wrong with it. As a matter of fact, it is all that he needs.

He has been questioned and shown his authorization and I don't think there is any objection to his being authorized by his manufacturers to do it. As far as what he is going to testify to, he is not going to talk about some peculiar knowledge that these individual shippers would have on any particular instance, such as a less than carload shipment that took three or four weeks. He is saying that his members have examined the proposal and know what it is about and know what the testimony is that was developed here and at St. Paul and here is an additional group of eighteen or twenty shippers who want to support this proposal and their position is the same as the men who already testified.

Exam. Roberts: That has been your testimony in so far as these shippers are concerned?

The Witness: Yes sir.

Exam. Roberts: You make your statement and you are finished as far as that statement is concerned.

The Witness: As far as that statement is concerned.
[fol. 367] Exam. Roberts: As far as their need for the service is concerned?
The Witness: Yes.
Exam. Roberts: Do you have any more questions?

By Mr. Morken:

Q. How many customers do these people that you represent have in this sixteen state area?

Mr. Lane: Objection.
Exam. Roberts: Off the record.

(Discussion off the record.)

Mr. Lane: I still object for the reason that I think this is highly improper.

By Mr. Morken:

Q. You know how many accounts or we call them monument or memorial dealers in these sixteen midwest states, these people you are speaking for serve.

A. The eighteen Barre, Vermont members who have signed these statements authorizing me to testify for them have given me verbal information stating that they have dealers totaling 1,034 in the sixteen state area. I might add that there is undoubtedly some duplication there. How many, we don't know exactly.

Q. More than one manufacturer in Vermont might serve the same Midwest dealer?

A. That is right.

Q. Do you know the tonnage that was shipped during the year 1951 by these Barre, Vermont manufacturers into [fol. 368] these sixteen midwestern states.

A. The source of this information is the monthly reports of the Barre Granite Association member companies. This is the total amount of pounds of Barre, Vermont granite shipped to the sixteen states for the period January 1, 1951 to January 1, 1952, and it is an approximation. It is approximately seventeen million.

Q. Would that figure include th——

Exam. Roberts: Is that tonnage or poundage?
The Witness: That is seventeen million pounds.

By Mr. Morken:

Q. Would that include the Rock of Ages figures and the Jones Brothers figures?

A. Yes.

Q. As part of your duties at the present time at the Barre Guild, is that the name of it?

A. The Barre Guild Consolidation Service.

Q. As part of your duties at the present time, are you assisting and working on building up these pool cars?

A. Yes, in my dealer contact as field representative for the Association, almost inevitably the matter of transportation is discussed when I speak with dealers, and I am always careful to inform as many dealers as I can that consolidated car service is available to them as in fact it actually is. By that I mean we have a limited number of break bulk points and many dealers are not served by [fol. 369] consolidated cars simply because they are not near enough to the break bulk cities.

Q. If this service is authorized, will the Barre Guild assist its members in arranging pool car load shipments?

A. If the authority is granted and because the Barre Granite Association is interested in seeing it granted, I am sure that the officials and members of the Barre Granite Association would do everything in their power to assist the members and make every possible use of the service as proposed.

Q. Prior to coming here to this hearing, did you inquire with any carriers or official body to determine what was the motor carrier service out of the Barre, Vermont area on granite to these midwestern states? Did you make such an inquiry?

A. Yes.

Q. Who did you inquire with?

A. On October 10th we received a letter from the Barre Granite Association, received a letter from a retail dealer in Hartford, Wisconsin.

Mr. Lane: May I see the document?

By Mr. Morken:

Q. Who did you inquire of to determine if there was motor carrier service from Barre, Vermont to these midwestern states?

A. The St. Johnsbury Trucking Company and the District Supervisor of the Interstate Commerce Commission, located at Lebanon, New Hampshire.

[fol. 370] Q. Did both of these companies answer your inquiries in service?

A. The conversation with the St. Johnsbury Company was a telephone conversation in which the clerk or dispatcher informed me that the——

Mr. Lane: Objection. And I move to strike.

Exam. Roberts: The objection is sustained. Do you know of your own knowledge?

By Mr. Morken:

Q. Do you know if the St. Johnsbury Trucking Company offers any service, either through or by connecting service from the Barre, Vermont area to the midwestern states?

A. I know they do not offer any through service.

Q. You did not inquire if they had direct service?

A. I was informed——

Mr Lane: Objection

Exam. Roberts: Of your own knowledge do you know if there was any?

The Witness: Of my own knowledge I do not know that there was any connecting service.

By Mr. Morken:

Q. Did the District Supervisor of the Interstate Commerce Commission of the Bureau of Motor Carriers advise you that there was any such service?

Mr. Lane: Objection.

Exam. Roberts: Overruled. What was the result of your conversation with the Interstate Commerce Commission District Officer?

[fol. 371] The Witness: The District Supervisor wrote me a letter on October 24th.

By Mr. Morken:

Q. What did he say?

Mr. Lane: Objection.

Mr. Morken: On what grounds?

Exam. Roberts: I asked the witness what was the result of his investigation with the District Office. What was the result?

The Witness: The District Supervisor advised me that he was not aware of any direct truck through service to the area which I mentioned in my letter, and he said he doubted that such service existed.

Mr. Lane: I move to strike the witness's answer.

Exam. Roberts: The latter part of that answer may be stricken. Please continue.

By Mr. Morken:

Q. Of your own knowledge, is there any direct motor carrier service from Barre, Vermont to these midwestern states?

A. No, not of my own knowledge.

Q. The Examiner asked about the area that is involved where granite originates and I believe he said something about Barre, Vermont and five miles. Would a five mile circle around the town of Barre, Vermont cover the source of supply of this granite?

[fol. 372] A. No it would not.

Exam. Roberts: I was speaking of a particular shipper there.

By Mr. Morken:

Q. Are the sources of supply of this granite located in one county?

A. All are located in one county with the exception—and that county, incidentally, is Washington County, Vermont—with the exception of the town of Williamstown, and that is located in Orange County, Vermont.

Q. Other than this Barre, Vermont granite and the point of Williamstown, are there other sources of supply of granite and building stone in Vermont?

A. Yes.

Mr. Morken: You may inquire.

Cross-examination.

By Mr. Lane:

Q. When you say building stone, do you refer to granite only?

A. No.

Q. You have nothing to do with the shipment of marble?

A. No.

Q. Marble originates in another part of the state, isn't that so?

A. Yes.

Q. In the Rutland area?

A. Yes.

[fol. 373] Q. And your members have nothing to do with those quarries?

A. No.

Q. Mr. McBride, how many members were represented at this meeting of November 30, 1952?

A. I believe nine, Mr. Lane, ten.

Q. As a result of your efforts after you secured authority from nine of those members, you went out and solicited authority from others?

A. At the time I called the meeting I sent the notice to approximately twenty and ten could be present so I personally went to the offices of the other ten, told them exactly what transpired at the November 13th meeting, and asked them the same question I had asked at the meeting.

Q. At the meeting of November 13th was the entire membership invited?

A. No.

Q. How many members are there in the Association?

A. Seventy-five.

Q. And only ten were invited to this meeting?

A. No, approximately twenty were invited.

Q. Of those ten who were present, did they constitute a quorum according to the rules of your Association?

A. This was not a meeting of the Association.

Q. This was a meeting of the selected members who happend by chance to be members of the Association, is that correct?

[fol. 374] A. It was a meeting of manufacturers who, from our records, we knew shipped granite into the sixteen state area.

Q. There was no official act of the Association authorizing you to appear here?

A. I am the official field representative of the Barre Granite Association. I need no such meeting to have me represent the Barre Granite Association. I have authorization to represent the individual matters.

Q. In matters of good will and sales?

A. In this case and in the matter of the Schaffer Transportation Company.

Q. Do you have written authorization from the Association authorizing you to appear on behalf of the individual members?

A. No, I have authority from the individual members.

Q. You have authorization from eighteen members?

A. Yes.

Q. Individuals?

A. Yes.

Q. Did you say that you represented Cook and Watkins?

A. Yes.

Q. Where do they ship to?

A. Cook and Watkins are one of the eighteen Barre manufacturers who were represented at the November 13th meeting. As I stated a minute ago, our records and our Association showed that they shipped granite to one or more of the sixteen states.

[fol. 375] Q. I want to make this as short as possible. I don't like to prolong this record. If I asked you specific questions about these eighteen manufacturers whom you purport to represent with regard to destination, tonnage to specific destinations, methods of transportation being used at the present time, the split between pool car, full carload, and less than carload, questions of that nature,

would you be able to stand cross-examination and answer me in a responsive manner?

A. I think I would attempt to to the best of my knowledge.

Q. Where do Cook and Watkins ship to in the sixteen states involved in this application?

A. I don't have that specific information.

Q. If I asked you the same questions about the other seventeen manufacturers, would your answers be the same?

A. Yes, I would not have that specific information.

Q. If I asked you about the present tonnage, how it was split up according to carload, less than carload and pool carload, would you be able to give me the answers?

A. I have that information only in total, not for a specific company.

Q. Do you know whether any one of these eighteen manufacturers would utilize the services of this applicant if his published tariff was in existence on rail, less than carload, rates?

Mr. Morken: I object. It is immaterial.

Exam. Roberts: The objection is overruled. He may [fol. 376] answer if he knows.

By Mr. Lane:

Q. Why didn't you investigate interline truck service from the Barre, Vermont area to these sixteen destination states, interline motor carrier service?

A. Because we knew of none available and after receiving the response from the St. Johnsbury Trucking Company and the Interstate Commerce Commission, it appeared that there was no practical interline service available.

Q. You heard Mr. Nelson Wright testify that he was presently utilizing a carrier as far west as Buffalo, New York, did you not?

A. I didn't understand your question.

Q. You heard Mr. Nelson Wright testify that his company used a motor carrier service as far west as Buffalo, New York?

A. Yes.

Q. Do you know whether or not there are motor carriers

who provide service from Buffalo, New York to these sixteen destination states?

A. I know of no service, no interline service.

Q. What inquiry did you make as to motor carrier service available beyond Buffalo?

A. I know of the St. Johnsbury Trucking Company.

Q. Was that the extent of your inquiry?

A. Yes, and the Interstate Commerce Commission.

Q. The St. Johnsbury Trucking Company were the only [fol. 377] ones you contacted. Did the St. Johnsbury Trucking Company or any other trucking company refuse to handle granite on an interline basis to any of these sixteen destination states?

A. Not that I know of.

Q. You know as a practical matter, don't you Mr. McBride, that even though through rates may not be in effect, you can move the granite from Barre, Vermont to any of these destination states on a combination of local rates?

A. I knew that no such service was available.

Q. Didn't you appear at Columbus, Ohio last June?

A. Yes.

Q. You knew what the situation was in effect at that time, did you not, particularly with respect to L. and F. Hauling Company?

A. I heard the testimony of the representative of the local Columbus organization who, among other things, testified he had hauled marble from Vermont was in error, and he also stated he had hauled granite from Barre, Vermont to some farm building and the granite was Deer Isle granite.

Q. Did you testify in the L. and F. Hauling case?

A. No.

Q. What case did you testify in?

A. The Kanuckel case. I testified in the Kanuckel case.

Q. While you were present at Columbus, did you hear the testimony with regard to L. and F. transporting granite from Buffalo and interlining the granite with western carriers at that point.

[fol. 378] A. I don't recall that testimony. I recall the case. They were hauling to the Buffalo area.

Q. You represent manufacturers who ship to the Midwest, do you not?

A. Yes.

Q. Do you know that Kanuckel has been hauling to the Midwest from Barre, Vermont?

A. Not that I know.

Q. Didn't you testify in support of his application?

A. I wasn't—no, he wasn't hauling then, that I know of.

Exam. Roberts: Please answer the question. Do you understand the question?

The Witness: I understand that he is asking me if Mr. Kanuckel is hauling granite to the Midwest from Barre, Vermont, and I said I don't know that.

Exam. Roberts: You say you don't know that?

The Witness: No.

By Mr. Lane:

Q. Do you know whether or not Daniel Hill of Northfield, Vermont has been hauling from Barre, Vermont to Midwest points?

A. I knew that he was hauling granite to the Ohio area and the only other information I have about it is that at one time the Barre Granite Association was informed that Mr. Hill's rights had been rejected or revoked or denied [fol. 379] and he was no longer eligible to haul, and I know of no further hauling that he is doing.

Mr. Lane: That is all I have.

Exam. Roberts: Are there any questions, Mr. Metzler?

Mr. Metzler: No.

Redirect examination.

By Mr. Morken:

Q. Is this granite your people ship the kind of a commodity that can be rehandled and juggled from one trailer to another easily?

A. No. Usually because of its size and weight.

Q. Is it also subject to damage in this rehandling?

A. Yes.

Q. If there was such a service as Mr. Lane seems to be trying to leave the impression that there is, that one carrier can haul it to Buffalo and transfer it, that it can be interlined with another carrier going to Canada or Ohio or Kentucky, would that help or satisfy any of the needs that you have testified about in this proceeding in so far as the State of Illinois or any of the midwestern states are concerned?

A. Any discussion we have had along that line among the members, and my discussion with the dealers, I can think of only one dealer who suggested that the Barre industry attempt to find interline carriers. They don't appear to be interested in wanting interline carriers. They badger us and write to us and talk to us about direct line service.

[fol. 380] Mr. Morken: That is all.

Recross-examination.

By Mr. Lane:

Q. Do you know one of your members has received three day service on interline shipment from Buffalo on granite originating in Barre, Vermont?

Mr. Morken: Destination where?

Mr. Lane: Destination Ohio.

Mr. Morken: Objection. It is outside the scope of this application.

Exam. Roberts: The objection is overruled.

The Witness: No I don't know.

Mr. Lane: That is all.

Exam. Roberts: You may be excused.

(Witness excused.)

Mr. Morken: The applicant rests.

Exam. Roberts: Do the intervenors or protestants have any testimony to offer at this time.

Mr. Lane: I do. I call Mr. Keenan.

T. L. KEENAN was sworn and testified as follows:

Direct examination.

By Mr. Lane:

Q. State your name, sir.
A. T. L. Keenan.
Q. With what firm are you connected?
A. Central Vermont Railway, Incorporated.
[fol. 381] Q. With headquarters where?
A. St. Albans, Vermont.
Q. In what capacity are you employed by them?
A. I am chief of the Tariff Bureau in the Freight Traffic Department.
Q. How long have you been in the Freight Traffic Department of the Central Vermont Railroad?
A. Approximately thirty-three years.
Q. Is your company opposed to this application?
A. Yes sir.
Q. Why, bearing in mind that this applicant seeks authority to transport manufactured and rough granite from all points and places in Vermont to sixteen destination states outlined by the Examiner at the start of the hearing.
A. Central Vermont Railway is opposed to this application, having in mind the scope of the authority sought, in view of the fact that at four of its stations in Vermont; namely, Barre, Montpelier, Northfield and Waterbury, Vermont, granite originates and is shipped by Central of Vermont Railway and its connections or is transported by Central of Vermont Railway from those four stations titled in regular and substantial movements to the destination territory.
Q. Are through rates and routes in effect on this traffic from the Barre, Vermont area and those four points you mentioned to the destination points here involved?
[fol. 382] A. Yes they are.
Q. Is your company able to take care of any additional traffic from this area?
A. Yes.
Q. You do not have a shortage of cars?

A. No.

Q. Does your company maintain a solicitation force?

A. Yes.

Q. Seeking to increase its business?

A. Yes sir.

Q. Do you regard the granite traffic as being desirable?

A. Very desirable, yes sir.

Q. In your opinion, if this application is granted, would it have an adverse effect upon your company?

Mr. Morken: I object. It is an improper foundation.

Exam. Roberts: The objection is overruled.

The Witness: I do.

By Mr. Lane:

Q. Does your company have competition in the transportation of granite?

A. Very keen.

Q. In the motor carrier competition, do you know whether or not motor carriers have arrangements for interchange of trailers?

A. Yes sir.

Q. You have been present throughout the hearing today, have you not?

[fol. 383] A. I have.

Q. Have there been any complaints regarding this granite traffic?

A. To my knowledge we have had no complaints on the handling in the four states mentioned to the destination territory included in this application.

Q. With respect to this particular traffic, your line is in competition, is it not, with the Barre and Chelsea Railroad?

A. That is right, sir.

Q. And you have motor carrier competition?

A. We are in competition at Barre and Montpelier with them and in Northfield and Waterbury local stations. The joint stations are common points with the Barre and Chelsea.

Q. On traffic to these destination states, what are your principal points of interchange?

A. We interchange with the Canadian National Railway at East Alburgh, Vermont and that is again interchanged at Port Huron, Michigan, a connection with the Grand Trunk Western line into the Chicago area for connecting carriers beyond Chicago.

Q. Do you have anything further to say with regard to this application?

A. We feel that——

Mr. Morken: I submit he should be asked a specific question.

[fol. 384] Exam. Roberts: I will sustain the objection.

By Mr. Lane:

Q. I asked you a question a few moments ago about adverse effects. Will you tell the Examiner why, in your opinion, this application would have an adverse effect?

Mr. Morken: Object. It is repetitious.

Exam. Roberts: The objection is overruled.

The Witness: Will restate the question?

By Mr. Lane:

Q. Will you tell the Examiner why the granting of this application, in your opinion, will adversely affect your company?

A. It will enhance the keen competition of which I spoke a few minutes ago, which is presently occasioned by Barre and Chelsea Railroad and other rail routes, plus certificated motor carrier operations, and this will be just one more if the certificate is granted.

Q. There has been some discussion or some testimony heretofore with regard to monuments and markers. Does your company also handle building granite?

A. Well, our experience has been that the preponderance of the granite that moves from our stations is the monument variety. It is either moved—and of that preponderance the greater portion by far is the finished products and the rough constitutes a certain percentage, but I would say it is all monumental stone from the Barre, Vermont area.

Mr. Lane: Thank you very much. You may inquire.

[fol. 385] Cross-examination.

By Mr. Morken:

Q. I believe you and one other witness are the only two here from the railroads, is that correct?

A. I speak for my own company. I do know of no representative from the Rutland here.

Mr. Lane: There were a number of railroad representatives at the previous hearing.

Mr. Morken: Yes, and I am talking only about today.

By Mr. Morken:

Q. Your counsel has inferred in great detail these other carriers you mentioned in competition and I want you to mention one carrier or the carriers, if there is more than one, that hauls this stone from the Barre, Vermont area to any one of the sixteen midwestern states that are involved here. Name me the carrier that is involved in competition.

A. I know of no single line.

Q. Name me the connecting carriers.

A. L. and F. Hauling.

Q. What states does it serve?

A. Ohio, they go over the Niagara-Buffalo frontier and I know from reading the transcript of the other hearing that they interchange beyond the Buffalo area.

Q. To what points?

A. Illinois and Ohio specifically.

Q. You have known about this application that has been filed for almost a year now?

[fol. 386] A. I know it has been filed.

Q. And I gather this is a matter of quite some importance to railroad?

A. Yes, sir.

Q. You made quite an investigation about it?

A. Yes.

Q. First, can you show me one instance of one consignee

in th Midwest where you have lost one pound of tonnage due to this truck movement that you claim exists?

A. I said we are——

Q. Can you name one consignee where you have lost one pound of tonnage due to this competitive truck service that you are talking about?

A. It is reflected on our overall picture.

Q. Can you answer the question?

A. I don't know of any one specific item.

Q. You have known about it for over a year?

A. I have known about it for several years that our tonnage is decreasing.

Q. The application here. You have known about it for a year?

Mr. Metzler: He doesn't have to answer that trick question.

Exam. Roberts: That is not a trick question.

The Witness: I don't know of any.

By Mr. Morken:

Q. Is there any?

[fol. 387] A. There will be potential in the territory which he desires to serve.

Q. Do you think that Mr. England or Mr. Wright are wrong that such a service will build up the amount of granite moving from Barre and moving from that area and make more business for everyone?

Mr. Lane: It is not incumbent upon this witness to characterize the testimony of Mr. England or Mr. Wright.

Mr. Morken: If he is afraid to answer the question——

Mr. Lane: It is an improper question.

Exam. Roberts: I will overrule the objection. Proceed. Will you answer the question?

The Witness: What was the question?

Exam. Roberts: Read the question, Mr. Reporter.

(The last question was read by the reporter.)

The Witness: No, I don't think it will.

By Mr. Morken:

Q. Did you prepare any type of an exhibit—assume that Mr. Schaffer hauled a truckload of granite every day—did you prepare an exhibit to show what financial effect that would have on your railroad?

A. No.

Q. Do you think it will hurt your railroad?

A. Certainly.

Q. You did not present any figures along that line and did not bring any along to show that.

[fol. 388] A. There is no yardstick of comparison because Mr. Schaffer is not operating today.

Exam. Roberts: Your answer could be yes or no. You made no compilation of figures?

The Witness: No I didn't.

By Mr. Morken:

Q. Who are these carriers who are interchanging equipment that you are testifying about?

A. Interchanging where? I don't understand.

Exam. Roberts: I don't think he said he knew of any carrier.

The Witness: I said I knew of the L. and F. Hauling to Buffalo.

By Mr. Morken:

Q. Then you are not aware of any carriers interchanging at Buffalo?

A. It is going beyond Buffalo. L. and F. Hauling and it is transferred for hauling beyond.

Q. Is it a physical interchange of the equipment rather than of the lading?

A. I don't know.

Q. As chief of the Tariff Bureau, do you call on any of your shippers or solicit their business?

A. No I do not.

Q. Do you have anything to do with arranging the train schedules or the service?

A. That wouldn't come under the heading of the Freight Traffic Department.

[fol. 389] Q. In the past say three or four or five years, what has the Central of Vermont Railway done to expedite less than carload service on shipments moving to say Minneapolis and St. Paul?

A. They have done all possible to expedite it.

Q. How have you changed your service?

A. We made additional house cars, merchandise cars in less than carload lots.

Q. That is on general commodity freight?

A. Yes.

Q. Not in the granite?

A. Granite goes in it.

Q. Granite moves in those cars?

A. General commodities without exceptions.

Q. If the granite moves in regular merchandise cars——

A. Yes.

Q. And you have increased the number of cars on your railroad to handle less than carload, and do I infer that your business has been increasing in the last three or four years?

A. Not in less than carload, no.

Q. It has been decreasing?

A. It has been decreasing.

Q. But you have increased the number of cars?

A. We have endeavored to improve the service at the interchange points.

[fol. 390] Q. Do you think you have improved over them?

A. We have done the best we can.

Q. What was the service then before these two and three and four week deliveries that the witnesses testified about? Was it slower than that before?

A. I don't know what specific territory you are speaking of, sir. I heard one statement that was seven days——

Q. There were shipments to the State of Iowa that went in February of 1951 and were delivered in March. That took three weeks, and there was a movement, another shipment to the State of Iowa or Illinois on December 21st that was delivered on the 14th of January. That took three weeks. Do you recall that testimony?

A. I do and I would have to know the specific route the traffic followed.

Q. My only comment is that you say you have improved your service. Was it worse than that before?

Exam. Roberts: Let us find out whether the shipment moved over that line. I understand there is more than one line operating out of there. See whether his line handled this shipment.

By Mr. Morken:

Q. Do you recall who originated those shipments?

A. As I recall, I believe the Barre and Chelsea was the originating railroad.

[fol. 391] Q. Is your service better than theirs? Or about the same?

A. I would say it is approximately the same.

Q. If your service approximates that, again, if these deliveries take two and three weeks at the present time, what was it three years ago before you improved on it?

A. I don't know, sir.

Mr. Lane: I object.

Exam. Roberts: The objection is sustained. Proceed.

By Mr. Morken:

Q. I gather from your position that this granite moves by truck at the present time, but there must be some need for truck service or these people wouldn't use it, is that correct?

A. I am not in a position to answer that.

Mr. Morken: I have nothing further.

Redirect examination.

By Mr. Lane:

Q. Mr. Keenan, I don't know whether I got your answer correctly in response to a question on cross-examination concerning your opinion of the testimony of Mr. Wright and Mr. England. Would you clarify that?

A. I said I am not in a position to confirm or contradict what they said. I am not a granite manufacturer.

Q. In other words, they are entitled to their own opinion and you are entitled to yours, is that the answer?

A. Yes.

Mr. Lane: That is all.

[fol. 392] Exam. Roberts: Is there any recross-examination?

Mr. Morken: No.

Exam. Roberts: You may be excused.

(Witness excused.)

Exam. Roberts: We will take a five minute recess.

(A short recess was taken.)

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Exam. Roberts: Come to order, please. Is there any further evidence by protestants at this time?

Mr. Lane: Yes sir. Mr. Examiner, I am probably going to make the testimony of Mr. Helperin rather brief. I don't know that the testimony is even necessary.

His company serves the marble producing area of the western side of Vermont. From what I have been able to observe of the testimony at the previous hearing in the transcript and on hearing the testimony today, I don't know if it will be necessary to mention marble.

Exam. Roberts: Off the record.

(Discussion off the record.)

Mr. Morken: If it please the Examiner, I would like to amend the application in so far as it involves the request for authority from Vermont back to these sixteen mid-western states, to exclude the request for building stone so that the application as amended will read "Granites, manufactured and rough, from Vermont to these various states."

Mr. Lane: I have no objection to the amendment offered [fol. 393] in as much as it restricts the scope of the application without changing the jurisdiction.

Exam. Roberts: As I understand it, this is a further amendment. There were amendments at the previous hearing.

Mr. Morken: Yes, as respects some other commodities.

Exam. Roberts: As I understand it, you are now willing to further amend the application to restrict the commodities originating in Vermont to granite only and not building stone.

Mr. Morken: That is correct.

Exam. Roberts: The further amendment will be granted.

Mr. Lane: In view of that amendment by Mr. Morken and your acceptance of it, Mr. Examiner, I am not going to put Mr. Helperin of the Rutland Railroad on the stand, and protestants rest.

Exam. Roberts: Do you have any evidence, Mr. Metzler?

Mr. Metzler: In view of the evidence that developed at today's hearing by Mr. Morken in reference to the consignees in midwestern territory and the handling of those shipments by these intermediate destination carriers, I am going to make a request that there be a continued hearing either at Chicago or St. Paul to establish such facts through railroad and other witnesses.

Exam. Roberts: Your request for a continued hearing will be denied, Mr. Metzler. Is there any further evidence?

Mr. Metzler: I would like to direct Examiner's atten-[fol. 394] tion Docket MC–16903. Those were the Moon and Sims applications which involves the same commodities involved here; namely, hauling stone over long distances and both were denied in November of 1951 by Division 5.

I would like to direct the Commission's attention to those as I think they are a recent expression in point.

Mr. Morken: Isn't that a matter of argument?

Mr. Metzler: No.

Exam. Roberts: Off the record.

(Discussion off the record.)

Exam. Roberts: The record will stand on its merits.

Do you gentlemen desire to file briefs?

Mr. Metzler: No desire to file a brief, Mr. Examiner.

Exam. Roberts: Hearing no request for filing of briefs, the hearing is closed.

(Whereupon, at 2:52 o'clock p.m., the hearing was closed.)

[fol. 396] APPLICANT'S EXHIBIT NO. 1

Application of A. W. Schaffer, d/b/a
Schaffer Transportation Co.
Docket MC 93529 Sub 2

APPENDIX "D"

Applicant is operating at present, as follows:

IRREGULAR ROUTES:

Granite,

From points and places in Grant County, S. Dak., to points and places in Montana, Colorado, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York.

Silican carbide,

From Niagara Falls, N. Y., to points and places in Grant County, S. Dak.

Steel Shot,

From Mansfield, Ohio to points and places in Grant County, S. Dak.

Polishing Stucco,

From Fort Dodge, Iowa, and Chicago Heights, Ill., to points and places in Grant County, S. Dak.

Return with no transportation for compensation except as otherwise authorized.

[fol. 397] APPLICANT'S EXHIBIT NO. 2

Application of A. W. Schaffer, d/b/a
Schaffer Transportation Co.

Docket MC 93529 Sub 2

Applicant is operating at present, as follows: MC 93529

REGULAR ROUTES:

General commodities,

From St. Paul, Minn., to Milbank, S. Dak.:

From St. Paul over U. S. Highway 12 to Milbank.

Service is authorized from the intermediate point of Minneapolis, Minn., restricted to pick-up only; and the off-route point of Revillo, S. Dak., restricted to delivery only.

Livestock, empty barrels, drums, baskets, crates, and *boxes,*

From Milbank, S. Dak., to South St. Paul, Minn.:

From Milbank over U. S. Highway 12 to St. Paul, Minn., thence over city streets and connecting highways to South St. Paul.

Service is authorized to intermediate and off-route points of Minneapolis and St. Paul, Minn., restricted to delivery only; and from those in South Dakota within 25 miles of Milbank, restricted to pick-up only.

Twine,

From Stillwater and Duluth, Minn., to Milbank, S. Dak., as follows:

From Stillwater over Minnesota Highway 212 to Minneapolis, Minn., thence over U. S. Highway 212 to junction U. S. Highway 75, thence over U. S. Highway 75 to Madison, Minn., and thence over unnumbered highways to Milbank (also from Minneapolis over U. S. Highway 12 to Milbank).

From Duluth over U. S. Highway 61 to Sandstone, Minn., thence over Minnesota Highway 23 to St. Cloud, Minn., thence over U. S. Highway 52 to Sauk Center, Minn., thence over Minnesota Highway 28 to Graceville, Minn., thence over U. S. Highway 75 to Ortonville, Minn., and thence over U. S. Highway 12 to Milbank.

From Duluth over U. S. Highway 61 to St. Paul, Minn., thence over U. S. Highway 12 to Milbank.

Service is not authorized to or from intermediate points.

Service is authorized to the off-route point of Revillo, S. Dak., restricted to delivery only.

fol. 398] Return with no transportation for compensation except as otherwise authorized, over the above-specified routes to the above-specified origin points.

REGULAR AND IRREGULAR ROUTES:

General commodities,

From St. Paul, Minn., to Milbank, S. Dak.:

From St. Paul over U. S. Highway 212 to the Minnesota-South Dakota State line, thence over irregular routes to Milbank.

Service is authorized from the intermediate point of Minneapolis, restricted to pick-up only; and to the off-route point of Revillo, S. Dak., restricted to delivery only.

Livestock, empty barrels, drums, baskets, crates, and *boxes,*

From Milbank, S. Dak., to South St. Paul, Minn.:

From Milbank over irregular routes to the South Dakota-Minnesota State line, thence over U. S. Highway 212 to St. Paul, and thence over city streets and connecting highways to South St. Paul.

Service is authorized to the intermediate and off-route points of Minneapolis and St. Paul, restricted to delivery only; and from those in South Dakota within 25 miles of Milbank, restricted to pick-up only.

Return, with no transportation for compensation except as otherwise authorized, over the above-specified regular and irregular routes to the above-specified origin points.

IRREGULAR ROUTES:

Emigrant movables,

Between Milbank, S. Dak., and points and places in South Dakota within 25 miles of Milbank, on the one hand, and, on the other, points and places in Minnesota.

[fol. 399] APPLICANT'S EXHIBIT No. 3

ORDER IM-141-D

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 22nd day of June, A. D., 1951

No. MC 93529 SUB 2

A. W. SCHAFFER,
REVILLO, SOUTH DAKOTA

Upon consideration of petition duly filed:

It appearing, That application has been duly filed in this proceeding by A. W. Schaffer, and that applicant has advised this Commission that he desires to use the trade name SCHAFFER TRANSPORTATION CO.: and has requested that said application be amended to reflect the use of said trade name;

It further appearing, That the use of the trade name requested does not involve a change in the ownership of the operating rights of the applicant, therefore,

It is ordered, That the said application be, and it is hereby amended to show the name and trade name of the applicant as follows:

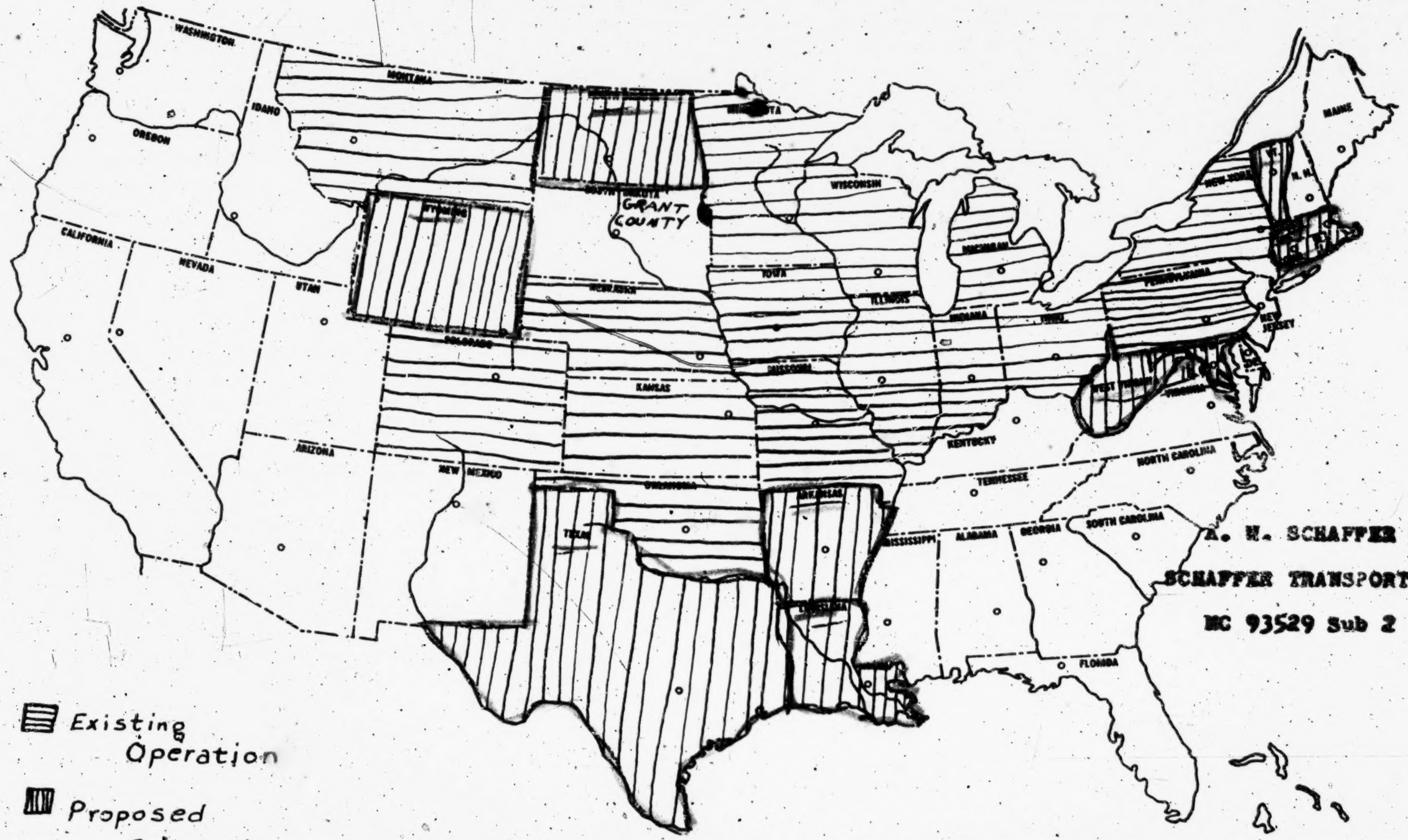
A. W. SCHAFFER,
DOING BUSINESS AS SCHAFFER TRANSPORTATION CO.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

Granite - From Grant County, South Dakota to points and places in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, Washington, D. C., Texas, Arkansas, Louisiana, Wyoming and North Dakota.



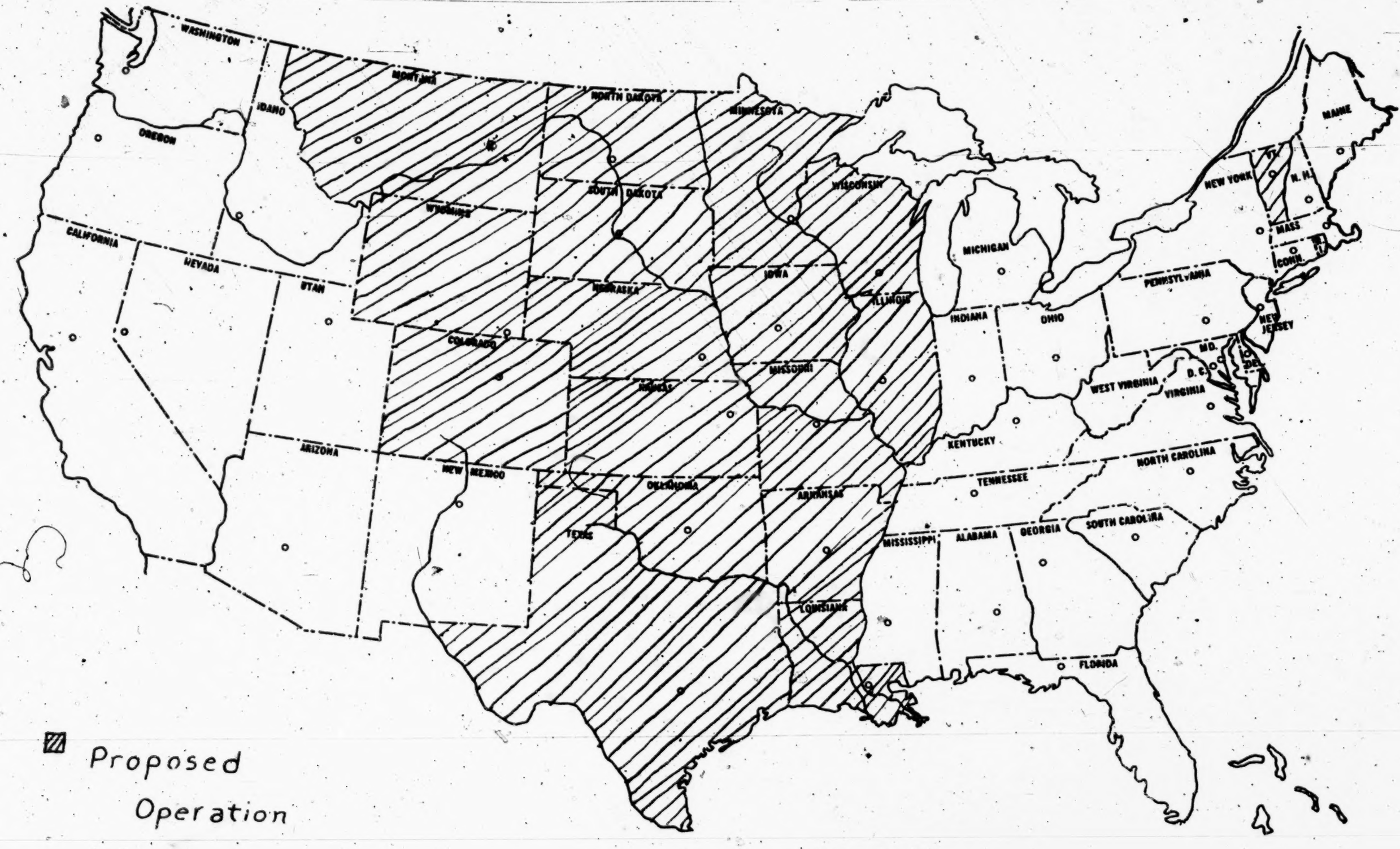
A. N. SCHAFFER d/b/a
SCHAFFER TRANSPORTATION CO.
MC 93529 Sub 2

APPENDIX "C"

[fol. 401] APPLICANT'S EXHIBIT No. 5

(See Opposite) ☞

Granite - From Vermont to points and places in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas and Louisiana.



APPENDIX "C"

[fol. 402] APPLICANT'S EXHIBIT No. 6

Application of A. W. Schaffer, d/b/a Schaffer Transportation Co.

Docket MC 93529 Sub 2

APPENDIX "A"

Unit No.	Equipment	License No.
51	1948 F8 Ford Tractor	26T826
	1948 Trailmobile tand. trailer	26–9011
52	1948 F8 Ford Tractor	26T825
	1948 Trailmobile tand. trailer	26–9010
53	1948 F8 Ford Tractor	26T824
	1945 Kentucky tand. trailer	26–9012
4	1948 F8 Ford Tractor	26T823
	1947 Fruehauf single axe trailer	26–8002
58	1948 F8 Ford Tandem truck	26T822
49	1949 F7 Ford Tractor	26T821
	1937 Trailmobile single axe trailer	26–8001
101	1950 F7 Ford Tractor	26T819
	1945 Wilson single axe trailer	26–9013
7	1946 Reo Tractor	26T828
102	1949 Chev Tractor	26T407
	1941 Fruehauf single axe trailer	26–9004
	1951 Mercury Car	26–R90
	1941 Chev Stock Truck	26T827

[fol. 403] APPLICANT'S EXHIBIT NO. 7

SCHAFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

BALANCE SHEET

December 31, 1951

ASSETS:			
Cash		$ 821.46	
Accounts Receivable		1,641.60	$ 2,463.06
Trucking Equipment & Cars		$61,820.66	
Less Depreciation Reserve		39,095.54	$22,725.12
Farm Equipment		$ 9,031.85	
Less Depreciation Reserve		4,805.41	$ 4,226.44
Farm			$ 9,000.00
TOTAL ASSETS			$ 38,414.62
LIABILITIES:			
CURRENT:			
Rozum Motor Company		$ 200.00	
Independent Direct Service		100.00	
Maynes & Company		150.00	
S & B Motor Supply		260.00	
Social Security		252.63	
Employment Security		191.09	
Employment Security (federal)		98.21	
Mortgage Payable		522.00	
TOTAL CURRENT LIABILITIES			$ 1,773.93
LONG TERM:			
Note Payable at $200 month		$ 1,200.00	
Mortgage Payable at $306 month		6,875.00	
Mortgage Payable at $200 month		3,000.00	
Mortgage Payable (Farm) semi-annual		3,600.00	
TOTAL LONG TERM LIABILITIES			$14,675.00
TOTAL LIABILITIES			$ 16,448.93
NET WORTH DECEMBER 31, 1951			$ 21,965.69

[fol. 404] SCHAEFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

OPERATING STATEMENT 1951

INCOME:

Granite Truck Lease	$ 9,357.62		
Granite Truck Haul Granite	49,881.16		
Granite Truck Backhaul	19,736.49		
C.O.D. Fees Collected	47.63	$79,022.90	
Grain & Salt Truck Grain	47,422.38		
Grain & Salt Truck Salt	31,096.42		
Grain & Salt Truck Grain Haul	3,823.36	$82,342.16	
Freight Truck Hauling		$15,048.21	
Insurance on Wrecked Truck		$ 2,500.00	$178,913.27

EXPENSES:

Gas & Oil	$29,465.55		
Repair & Upkeep	7,855.98		
Tires	11,972.73		
Labor	34,081.14		
Social & Employment Security	1,183.89		
Office Supplies	446.85		
Float & Exchange	129.06		
Tolls & Fines	2,143.17		
Damage Claims	906.31		
Lease	6,167.24		
Grain	38,201.68		
Salt	15,965.28		
Feed	338.00		
Workmen's Compensation Insurance	688.04		
Promotional & Sales	510.00		
Phone	1,530.61		
Licenses, Compensation Plates	4,117.36		
Filing Fees, Permits, Mileage	1,070.47		
Cargo & Liability Insurance	5,627.01		
Building Contents Insurance	40.13		
Loading	1,089.51		
Interest & Insurance	1,205.96		
Power	211.92		
Heat	205.05		
Garage Rent	430.00		
Miscellaneous	93.35		
Charged Off Accounts	512.57		
Depreciation	11,880.28		$178,069.14
NET INCOME FROM TRUCKING OPERATIONS			$ 844.13

[fol. 405]

SCHAFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

FARM OPERATING STATEMENT 1951

INCOME:		
Grain	$6,922.56	
Patronage Dividends	46.05	$6,968.61
EXPENSES:		
Seed	$ 871.82	
Machine Hire	257.00	
Supplies	71.40	
Repair & Maintenance	436.19	
Fuel	709.87	
Taxes	294.74	
Interest	168.67	
Phone & Power	115.46	
Depreciation	888.11	$3,813.26
NET INCOME		$3,155.35

[fol. 406]

SCHAFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

OPERATING STATEMENT 1951
GRANITE TRUCKS

INCOME:		
Lease	$ 9,357.62	
Granite	49,881.16	
Backhaul	19,736.49	
C.O.D. fees	47.63	$79,022.90
EXPENSES:		
Gas & Oil	$21,360.44	
Parts	6,916.11	
Tires	8,611.50	
Labor	19,170.84	
Social Security & Employment Security	671.00	
Tolls & Fines	1,324.65	
Claims	293.18	
Lease	6,167.24	
Workmen's Compensation Insurance	448.36	
Office Expense	1,126.91	
Promotional	135.00	
Phone	757.00	
Loading	294.75	
Cargo & Liability Insurance	2,824.30	
Licenses, Compensation Plates, fees	2,027.83	
Interest	605.96	
Depreciation	7,000.00	
Miscellaneous	93.35	$79,828.42
NET LOSS		$ 805.52

[fol. 407]

SCHAFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

OPERATING STATEMENT 1951

GRAIN & SALT TRUCKS

INCOME:		
Grain	$47,422.38	
Salt	31,096.42	
Grain Hauling	3,823.36	$82,342.16
EXPENSES:		
Gas & Oil	$ 4,493.36	
Parts	774.82	
Tires	2,871.01	
Labor	3,355.17	
Social Security & Employment Security	108.44	
Tolls & Fines	694.02	
Grain	38,201.68	
Salt	15,965.28	
Feed	338.00	
Workmen's Compensation Insurance	67.10	
Office Expense	1,450.00	
Promotional	290.00	
Phone	620.61	
Loading	250.00	
Cargo & Liability Insurance	2,240.00	
Licenses, Compensation Plates, fees	2,650.00	
Depreciation	4,000.00	
Interest	600.00	$78,969.49
NET PROFIT		$ 3,372.67

[fol. 408]

SCHAFFER TRANSPORTATION CO.

Docket MC-93529 Sub 2

OPERATING STATEMENT 1951

FREIGHT TRUCKS

INCOME:		
Freight		$15,048.21
EXPENSES:		
Gas & Oil	$3,611.75	
Parts	370.39	
Tires	490.22	
Labor	3,554.00	
Social Security & Employment Security	124.40	
Fines	124.50	
Damage Claims	613.13	
Workmen's Compensation Insurance	71.08	
Office Expense	736.00	
Promotional	85.00	
Phone	153.00	
Loading	544.76	
Cargo & Liability Insurance	562.71	
Licenses, Compensation Plates, fees	510.00	
Depreciation	880.28	$12,431.22
NET PROFIT		$ 2,616.99

[fol. 409] APPLICANT'S EXHIBIT No. 8

SCHAFFER TRANSPORTATION CO.

Docket MC–93529 Sub 2

Record of loads from Grant County, South Dakota and destination points for three trucks during year 1951

Date	Destination	No. of Stops
1- 2-51	Michigan	1
1- 6-51	Ohio	4
1- 8-51	Indiana	3
1- 9-51	Iowa, Kansas, Missouri	6
1-15-51	Ohio	1
1-20-51	Iowa	1
1-17-51	Minnesota	1
1-19-51	Indiana	5
1-20-51	Pennsylvania, Ohio	6
1-24-51	Illinois, Iowa	11
1-30-51	Ohio	6
1-30-51	Michigan, Indiana	7
1-31-51	Wisconsin	1
2- 3-51	Missouri	1
2- 6-51	Ohio	3
2- 9-51	Indiana	4
2-10-51	Michigan	4
2-16-51	New York	1
2-19-51	Illinois	2
2-20-51	New York	7
2-21-51	Indiana, Michigan	5
2-23-51	Michigan	5
3- 6-51	New York	5
3- 8-51	Indiana, Illinois	4
3-17-51	Illinois	2
3-22-51	Ohio	4
3-27-51	Illinois	1
3-30-51	Kansas	1
4- 3-51	New York	7
4- 5-51	Pennsylvania	3
4- 5-51	Ohio	3
4-11-51	Kansas	11

Date	Destination	No. of Stops
4-20-51	Michigan, Ohio	5
4-25-51	Kansas	1
4-28-51	Iowa, Nebraska	10
4-30-51	Illinois	3
5- 1-51	Wisconsin, Michigan	2
5- 4-51	Nebraska, Colorado	3
5- 5-51	Iowa, Kansas, Oklahoma	9
5- 7-51	Ohio	1
5- 9-51	New York, Illinois	10
5-14-51	Indiana, Ohio	13
5-16-51	Illinois, Iowa, Wisconsin	4
5-22-51	New York, Wis., Ohio	17
6- 2-51	Indiana, Michigan	5
6-12-51	Kansas, Nebraska, Oklahoma	9
6-16-51	New York	2
6-20-51	Illinois	1
6-25-51	Michigan, Indiana	13
6-29-51	Illinois	13
7- 5-51	Ohio	2
7- 6-51	Iowa, Nebraska, Kansas, Okla.	8
7-10-51	Ohio	6
7-13-51	Michigan	8
7-16-51	Indiana, Illinois	20
7-24-51	Michigan	11
7-25-51	Illinois	1
7-25-51	New York	11
[fol. 410]		
8- 2-51	Ohio, Indiana	11
8-30-51	Illinois	1
9-12-51	Kansas	1
9-27-51	Colorado, Kansas	4
10-10-51	Missouri	3
10-15-51	Missouri, Iowa, Illinois	7

[fol. 411] APPLICANT'S EXHIBIT No. 9

Summary of Freight Bills Covering Shipments
From Barre, Vermont
To
S. C. Stevenson Monument Works
Moberly, Missouri

Car No.	Date Shipped	Date Delivered	Weight	No. of Days
FGEX 59729	12-19-50	1- 2-51	775	17
PFE 44539	2-16-51	3- 6-51	510	18
11872 IC	5-26-51	6- 6-51	1020	11
ART 19154	5-31-51	6-11-51	600	11
166380	6-30-51	7-12-51	1900	12
63883 ATSF	7-14-51	7-25-51	880	11
48684 Wab	7-17-51	7-26-51	300	9
W 74055	8- 3-51	8-17-51	900	14
SSW 32106	8- 5-51	8-21-51	2350	16
53714	8-17-51	8-29-51	1425	12
Milw 20742	8-31-51	9-13-51	600	13
91413M	9-10-51	9-20-51	1950	10
5121	9-24-51	10- 2-51	920	9
CBQ-29128	10-10-51	10-18-51	1360	8
CBQ-47208	11- 3-51	11-12-51	910	9
W 47200	11-28-51	12- 4-51	345	7
47509	12- 8-51	12-17-51	360	9

[fol. 412] INTERVENOR'S EXHIBIT No. 10

C-15.1

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 95876 SUB 3

WM. M. DINGMANN,
DOING BUSINESS AS GRANITE CITY TRANSFER,
ST. CLOUD, MINNESOTA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 20th day of February, A. D., 1951

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions

of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Finished monumental and structual or partially finished granite, over irregular routes,

From points and places in Stearns County, Minn., and Grant County, S. Dak., to points and places in New York east of New York Highway 96, those in Pennsylvania east of U. S. Highway 15, and points and places in New Jersey, Delaware New Hampshire, Haryland, Vermont, Kentucky, Missouri, Kansas, Oklahoma, District of Columbia, Connecticut, Massachusetts, and Rhode Island.

Machinery, equipment, materials, and *supplies* used in, or in connection with, the quarrying, fabricating, and finishing of monumental and structual granite, over irregular routes,

From points and places in the above-specified destination territory (except those in Kentucky, Missouri, Kansas and Oklahoma), to points and places in Stearns County, Minn., and Grant County, S. Dak.

Return with no transportation for compensation except as otherwise authorized.

Authority is granted to traverse Ohio for operating convenience only.

[fol. 413] AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, Division 5.

W. P. BARTEL,
Secretary.

(SEAL)

[fol. 414] INTERVENOR'S EXHIBIT No. 11

C-10.1

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 95876*

WM. M. DINGMANN,
DOING BUSINESS AS GRANITE CITY TRANSFER,
ST. CLOUD, MINNESOTA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 6th day of December, A. D., 1951

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

IRREGULAR ROUTES:

Rough and manufactured granite,

Between points in Stearns, Wright, and Isanti Counties, Minn., Grant County, S. Dak., and Ashland County, Wis., on the one hand, and, on the other, points in Minnesota, Wisconsin (except Marathon County), Iowa, Illinois, Nebraska, and South Dakota, Indiana, Michigan, Ohio, that portion of Pennsylvania on and west of U. S. Highway 15, and that portion of New York on and west of New York Highway 96.

Supplies for quarrying and fabricating granite,

From Duluth, Minn., and points in Wisconsin (except Marathon County), Iowa, Illinois, South Dakota and Nebraska, to points in Stearns, Wright, Isanti, Renville, Redwood, Big Stone, Morrison, Benton, Lac Qui Parle, Saint Louis, Mille Lacs, and Kanabec Counties, Minn., those in Grant County, S. Dak., and those in Ashland County, Wis., except as otherwise authorized herein.

Machinery used in fabricating granite,

Between points in Minnesota, Nebraska, Iowa, Illinois and South Dakota; and between Ashland County, Wis., on the one hand, and, on the other, points in Wisconsin (except Marathon County), Minnesota, Nebraska, Iowa, Illinois, and South Dakota.

Stone,

Between Bedford, Ind., and points within 25 miles of Bedford, on the one hand, and, on the other, points in Minnesota on and north of U. S. Highway 12.

Supplies for quarrying and fabricating granite, and stone and machinery used in fabricating granite and stone in minimum shipments of 10,000 pounds,

From points in Indiana, Michigan, Ohio, that portion of Pennsylvania on and west of U. S. Highway

15, and that portion of New York on and west of New York Highway 96, to points in Stearns, Wright, Isanti, Renville, Redwood, Big Stone, Morrison, Benton, Lac Qui Parle, Saint Louis, Mille Lacs, and Kanabec Counties, Minn., those in Grant County, S. Dak., and those in Ashland County, Wis.

Any restatement of the authority granted herein shall not be construed as conferring more than one operating right.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

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*This certificate covers the remaining portions of the authority granted in the certificates issued to the above-named carrier in this proceeding and MC 95876 Sub 2, on February 4, 1943 and June 30, 1944, respectively, (as amended in MC 95876 and in MC-FC 53075), after the transfer of portions of said certificates to Oscar C. Radke, doing business as Radke Transit, pursuant to MC-FC 53075, as corrected.

[fol. 415] INTERVENOR'S EXHIBIT No. 12

(See Opposite) ☞

Washington
Oregon
California
Idaho
Nevada
Montana
Wyoming
Utah
Arizona
Colorado
New Mexico
North Dakota
South Dakota
Nebraska
Kansas
Oklahoma
Texas
Minnesota
Iowa
Missouri
Arkansas
Louisiana
Wisconsin
Mich.
Michigan
Illinois
Indiana
Ohio
Kentucky
Tennessee
Mississippi
Alabama
Georgia
Florida
S. Carolina
N.Carolina
Virginia
W.Va.
Pennsylvania
New York
Maine
N.H.
Mass
Conn.
R.I.
N.J.
Md
D.C.
Del.
This exhibit rejected Page 209. Transcript
GRANITE CITY TRANSFER AUTHORITY OPERATED FROM VERMONT. IN SO FAR AS IS AFFECTED BY THIS Application

[fol. 416] INTERVENOR'S EXHIBIT No. 13

(See Opposite) ☞

Washington
Oregon
California
Nevada
Idaho
Montana
Wyoming
Utah
Arizona
Colorado
New Mexico
North Dakota
South Dakota
Nebraska
Kansas
Oklahoma
Texas
Minnesota
Iowa
Missouri
Arkansas
Louisiana
Wisconsin
Mich.
Michigan
Illinois
Indiana
Ohio
Kentucky
Tennessee
Mississippi
Alabama
Georgia
Florida
S. Carolina
N.Carolina
Virginia
W.Va.
Pennsylvania
New York
N.J.
Del.
Md.
D.C.
Vt.
N.H.
Mass.
Conn.
R.I.
Maine

GRANITE CITY TRANSFER AUTHORITY OPERATED FROM GRANT CO. S.D. IN SO FAR AS IS AFFECTED BY THIS APPLICATION.

[fol. 417] INTERVENOR'S EXHIBIT No. 14

(See Opposite) ☞

Note

Pages 317 and 319 are on Card 6.

[fol. 418] INTERVENOR'S EXHIBIT No. 15

(See Opposite) ☞

Note

Pages 317 and 319 are on Card 6.

[fol. 419] INTERVENOR'S EXHIBIT No. 16

(See Opposite) ☞

SOUTHERN PACIFIC TRANSPORT CO.

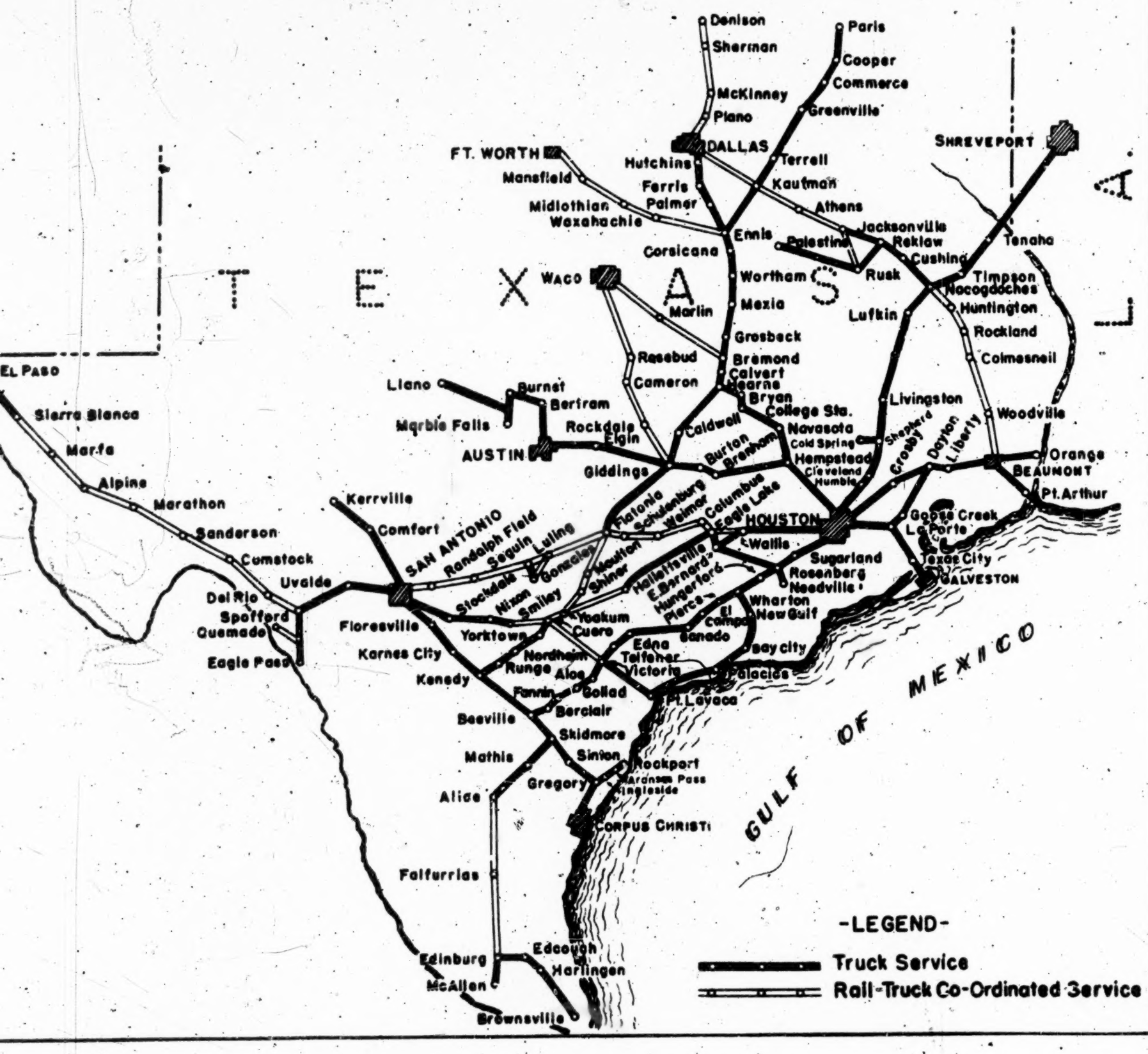
COMPLETE DEPENDABLE

FAST

TRUCK SERVICE RAIL SERVICE

ALSO TRAIN AND TRUCK CO-ORDINATED SERVICE

WE OPERATE MORE SCHEDULES TO MORE CITIES AND TOWNS IN TEXAS THAN ANY OTHER FREIGHT TRANSPORTATION AGENCY



[fol. 420]

INTERVENOR'S EXHIBIT NO. 17

TEXAS AND NEW ORLEANS RAILROAD COMPANY

REPORT SHOWING MILEAGES, STATIONS AND AGENCIES OF THE T&NO RAILROAD IN TEXAS AS OF APRIL 1, 1952

MAIN LINE MILEAGE	1810.83
BRANCH LINE MILEAGE	1800.50
TOTAL MILEAGE	3611.33
TOTAL NUMBER OF STATIONS	906
TOTAL NUMBER OF AGENCIES	242

[fol. 421]

INTERVENOR'S EXHIBIT NO. 18

TEXAS AND NEW ORLEANS RAILROAD COMPANY

REPORT SHOWING MILEAGES, STATIONS AND AGENCIES OF THE T&NO RAILROAD IN LOUISIANA AS OF APRIL 1, 1952

MAIN LINE MILEAGE	249.67
BRANCH LINE MILEAGE	431.71
TOTAL MILEAGE	681.38
TOTAL NUMBER OF STATIONS	297
TOTAL NUMBER OF AGENCIES	69

[fol. 422]

INTERVENOR'S EXHIBIT NO. 19

TEXAS AND NEW ORLEANS RAILROAD COMPANY

REPORT SHOWING NUMBER, TYPE AND TRACTIVE EFFORT OF LOCOMOTIVES IN FREIGHT SERVICE OWNED BY TEXAS AND NEW ORLEANS RAILROAD AS OF DECEMBER 31, 1945 & MAY 31, 1952

Type	Service	Locomotives		Average Tractive Effort	
		1945	1952	1945	1952
STEAM					
0-6-0	Switch	88	32	29,000	30,581
0-8-0	"	12	12	55,920	55,920
4-4-0	Road	20	3	19,395	19,873
4-4-2	"	5	0	26,080	—
4-6-0	"	21	12	30,187	35,060
4-6-2	"	37	31	39,809	40,253
2-6-0	"	82	50	32,345	32,491
2-8-0	"	73	33	41,667	40,233
2-8-2	"	57	55	53,630	53,630
2-10-2	"	61	92	67,883	70,225
4-8-4	"	11	11	62,200	62,200
DIESEL	Switch	11	80	56,373	58,454
"	Road	0	12	—	82,342
"	"	0	96	—	57,832
TOTAL		478	519	42,874	53,258

ON ORDER FOR 1953 DELIVERY

			Avg. Tractive Effort
DIESEL	Switch	20	56,373
"	Road	20	82,342
"	"	20	57,832

NEW MEXICO

ARK.

LOUISIANA

TEXAS

MEXICO

GULF OF MEXICO

RIO GRANDE RIVER

From To	CORSICANA via. Giddings	DALLAS via. Giddings
EL PASO	886.5	943.7

STATEMENT of MILEAGE

From To	DALLAS via. Beaumont	DALLAS via. Houston	FT. WORTH via. Beaumont	FT. WORTH via. Houston	HOUSTON	SAN ANTONIO	EL PASO
NEW ORLEANS	573.3	631.1	651.5	652.7	367.1	572.4	1182.3

From To	SHREVEPORT	GALVESTON	CORPUS CHRISTI	BROWNSVILLE	DALLAS	FT. WORTH	SHERMAN
HOUSTON	232.2	96.4	240.4	401.1	264.0	285.6	328.0

LEGEND

Texas & New Orleans — T. & N. O.
Southern Pacific — S. P.
Gulf Colorado & Santa Fe — G. C. & S. F.
Panhandle & Santa Fe — P. & S. F.
Atchison Topeka & Santa Fe — A. T. & S. F.
Missouri Pacific Lines — M. P.
Missouri-Kansas-Texas — M. K. & T.
Illinois Central — I. C.
Chicago Rock Island — C. R. I.
Burlington System — C. B. & Q.
Kansas City Southern — K. C. S.
Texas & Pacific — T. & P.
Louisiana & Arkansas — L. & A.
St. Louis Southwestern — S. L.-S. W.
Texas Mexican Ry — T. M.

Above mileage taken from Louisiana Table 13-L, I.C.C. 755 and Texas Table 9-L, I.C.C. 712.

SOUTHERN PACIFIC LINES
IN TEXAS & LOUISIANA
T. & N. O. R. R.

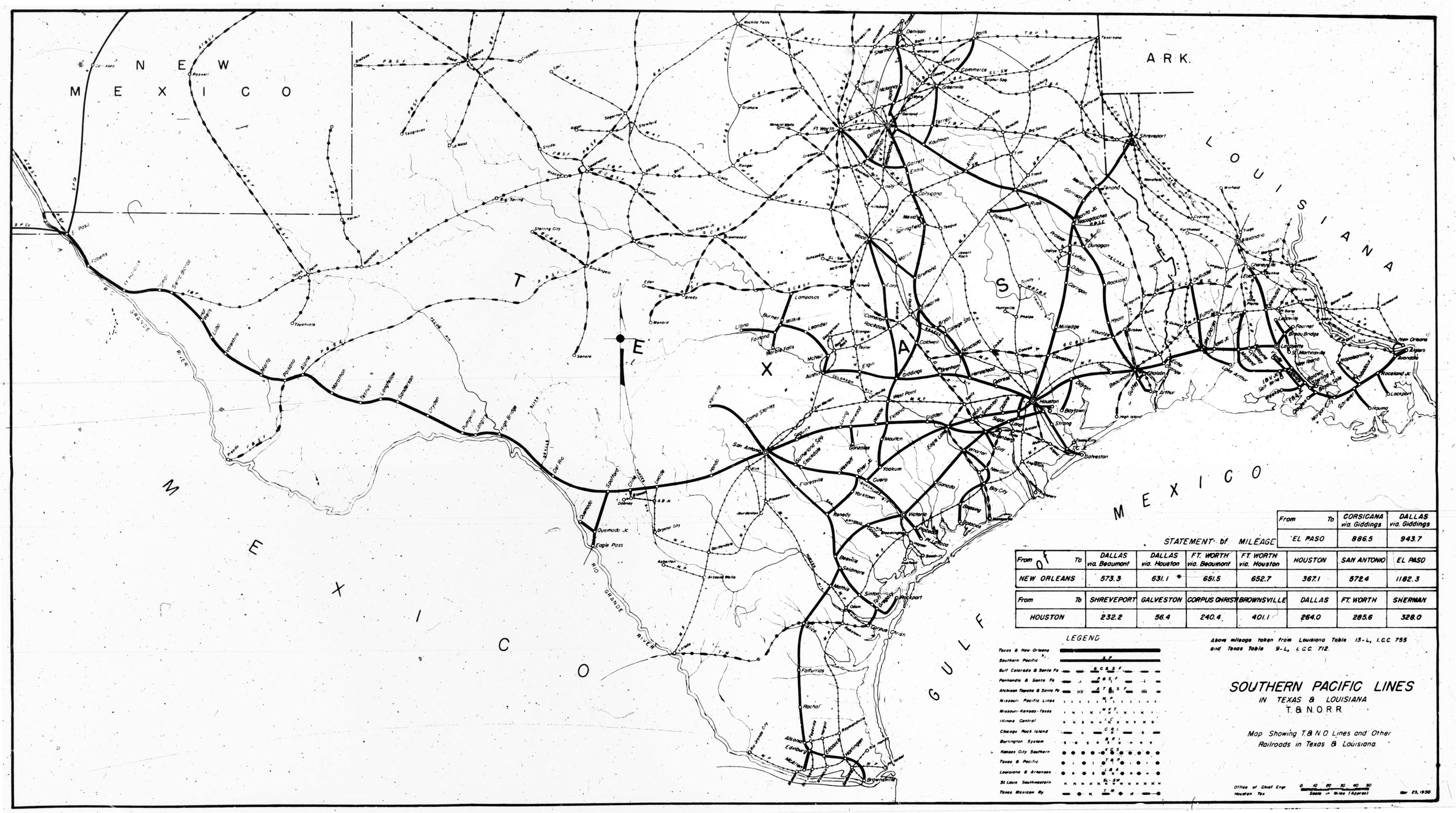
Map Showing T. & N. O. Lines and Other Railroads in Texas & Louisiana

Office of Chief Engr. Houston Tex.

Scale in Miles (Approx.) 0 10 20 30 40 50

Mar 23, 1950

Dwg 81001 C-13 T-60



STATEMENT of MILEAGE

From To	CORSICANA via. Giddings	DALLAS via. Giddings
EL PASO	886.5	943.7

From To	DALLAS via. Beaumont	DALLAS via. Houston	FT. WORTH via. Beaumont	FT. WORTH via. Houston	HOUSTON	SAN ANTONIO	EL PASO
NEW ORLEANS	573.3	631.1	651.5	652.7	367.1	572.4	1182.3

From To	SHREVEPORT	GALVESTON	CORPUS CHRISTI	BROWNSVILLE	DALLAS	FT. WORTH	SHERMAN
HOUSTON	232.2	56.4	240.4	401.1	264.0	285.6	328.0

LEGEND

Texas & New Orleans
Southern Pacific
Gulf Colorado & Santa Fe
Panhandle & Santa Fe
Atchison Topeka & Santa Fe
Missouri Pacific Lines
Missouri-Kansas-Texas
Illinois Central
Chicago Rock Island
Burlington System
Kansas City Southern
Texas & Pacific
Louisiana & Arkansas
St. Louis Southwestern
Texas Mexican Ry.

Above mileage taken from Louisiana Table 13-L, I.C.C. 755 and Texas Table 9-L, I.C.C. 712.

SOUTHERN PACIFIC LINES
IN TEXAS & LOUISIANA
T. & N. O. R. R.

Map Showing T. & N. O. Lines and Other Railroads in Texas & Louisiana

Office of Chief Engr. Houston Tex.

Scale in Miles (Approx.) 0 10 20 30 40 50

Mar. 23, 1950

[fol. 423]

INTERVENOR'S EXHIBIT No. 20

TEXAS AND NEW ORLEANS RAILROAD COMPANY

STATEMENT SHOWING NUMBER FREIGHT CARS AND AGGREGATE CAPACITY OWNED BY T&NO RAILROAD AS OF DEC. 1, 1944 AND APRIL 1, 1952

	Dec. 1944		April 1952	
Type of Car	No. of Units	Aggregate Capacity Tons	No. of Units	Aggregate Capacity Tons
Box Cars	5,438	264,270	7,936	394,570
Flat Cars	1,079	51,060	538	28,640
Stock Cars	1,880	75,200	634	25,360
Gondola and Hopper	1,787	93,180	4,866	259,780
Other	1,564	65,930	732	31,290
TOTALS	11,748	549,640	14,706	739,640

ON ORDER FOR 1952 DELIVERY

Box	1,000

[fol. 424] APPLICANT'S EXHIBIT No. 21

(Received in evidence as Applicant's Late Filed Exhibit #21. See T. p. 15, No. MC-93529 (S. R. H. Roberts 9-9-52.)

A. W. Schaffer
Operating Statement 1951

Garage

INCOME		
Gas & Oil	$10,341.70	
Parts	9,407.54	
Tires	11,972.73	
Insurance	2,500.00	$34,221.97
EXPENSES:		
Gas & Oil	$10,341.70	
Parts	9,202.20	
Tires	11,972.73	
Power	211.92	
Heat	205.05	
Rent	430.00	
Labor	5,001.13	
Social Security & Employment Security	175.05	
Insurance	40.13	
Bad Debts charged Off	512.57	
Workmen's Compensation Insurance	101.50	
Office Expense	368.00	$38,561.98
NET LOSS		$ 4,340.01

[fol. 425] APPLICANT'S EXHIBIT No. 22

JONES BROS.

LIST OF DEALERS

WISCONSIN:

Appleton Marble & Granite Works, Appleton, Wisc.
Benzing Mont. Co., Milwaukee, Wisc.
Bittman Mont. Co., Milwaukee, Wisc.
Johnson Mont. Co., Chippewa Falls, Wisc.
Kannenburg Mont. Co., Schofield, Wisc.
Carl Manthey & Son, Green Bay, Wisc.
North State Granite Works, Rhinelander, Wisc.
Schumacher Mont. Works, Pt. Washington, Wisc.
G. Reinke & Co., Oshkosh, Wisc.
Vach-Werner Mont. Co., Lacrosse, Wisc.
M. C. Mingesz & Son, Milwaukee, Wisc.
Zimmerman Memorial, Milwaukee, Wisc.

OKLAHOMA:

F. E. Arnold Mont. Co., El Reno, Okla.
Gifford Mont. Co., Muskogee, Okla.
Hahn Bros., Blackwell, Okla.
Bradford Mont. Co., Tulsa, Okla.
McAlester Mont. Co., McAlester, Okla.
Nelson Mont. Co., Enid, Okla.
Oklahoma City Marble & Granite Co., Okla. City, Okla.
Southwestern Marble & Granite Co., Okla. City, Okla.
Vernon C. Torrance, Ardmore, Okla.
Tulsa Mont. Co., Tulsa, Okla.

ILLINOIS:

Art Stone Co., Rock Island, Ill.
S. P. Atkinson Mont. Co., Champaign, Ill.
C. N. Clark & Co., Urbana, Ill.,
DeKalb Mont. Works, DeKalb, Ill.,
W. H. Grindol & Sons, Decatur, Ill.,
F. N. King & Son, Sandwich, Ill.,
Lincoln Mont. Co., Lincoln, Ill.,
McFall Mont. Co., Galesburg, Ill.,
John Merkle & Sons, Peoria, Ill.,

ILLINOIS (Cont'd)

Robt. Trigg & Sons, Rockford, Ill.,
Venetian Mont. Co., Chicago, Ill.,
Aurora Mont. Co., Aurora, Ill.,
S. Berliner Mont. Co., Forest Park, Ill.,
Bertacchi & Sons, Hillside, Ill.,
Charles G. Blake & Co., Chicago, Ill.,
Collins & Loomis, Libertyville, Ill.,
Eigel Mont. Co., Chicago, Ill.,
Gall & Co., Chicago, Ill.,
Arthur T. Haertel, Chicago, Ill.,
Hertzfield Mont. Co., Forest Park, Ill.,
Illinois Mont. Co., Chicago, Ill.,
Krumsick Memorial Co., Taylorville, Ill.,
Macomb Mont. Co., Macomb, Ill.,
[fol. 426] Meir Granite Co., Chicago, Ill.,
Mendota Mont. Co., Mendota, Ill.,
Pechar & Sons, Chicago, Ill.,
Otto Reich Mont. Co., Forest Park, Ill.,
Roselli Bros. Co., Hillside, Ill.,
St. Casimir Mont. Co., Chicago, Ill.,
Peter Troost Mont. Co., Hillside, Ill.,
E. Wunderlich Gr. Co., Joliet, Ill.,

IOWA:

C. O. Barr, Webster City, Ia.
Boyce Mont. & Wilbert Vault Co., Clinton, Ia.
Esterville Memorial Co., Estherville, Ia.
Sheeley & Lane, Council Bluffs, Ia.
Waterloo Memorial Co., Waterloo, Ia.
L. V. Case Mont., Pleasant, Ia.
W. H. Godden, Algona, Ia.,
Iglehart Mont. Co., Davenport, Ia,
Leyda-Burrus & Metz, Burlington, Ia.
Phillips & Gauld, Des Moines, Ia.
Sloan Mont. Works, Sigourney, Ia.
Whitney Mont. Works, Fairfield, Ia.

MONTANA:

Billings Mont. Co., Billings, Mont.
Butte Tombstone Co., Butte, Mont.

MONTANA (Cont'd)

Great Falls Mont. & Vault Co., Great Falls, Mont.
Kain Granite Co., Helena, Mont.,
Livingston Marble & Granite Co., Bozeman, Mont.
Trevillion-Johnson Memorials, Butte, Mont.

MINNESOTA:

Lee M. Bogle Co., Minneapolis, Minn.
Crookston Granite Co., Crookston, Minn.
Detroit Lakes Granite Works, Detroit Lakes, Minn.
Eckes Mont. Co., St. Paul, Minn.
Osborne-Peterson Inc., St. Paul, Minn.
Thrana Memorials, Inc., Duluth, Minn.
Westlund Mont. Co., Minneapolis, Minn.

TEXAS:

Chas. W. Stolz & Co., Victoria, Texas
Memorial Arts, Inc., Houston, Texas
Rodriguez Bros., San Antonio, Texas
Fort Worth Mont. Wks., Fort Worth, Texas
Youngblood Memorial Co., Greenville, Texas

MISSOURI:

Central Missouri Mont. Co., Marshall, Mo.,
Chas. A. Dunkelberg, Fulton, Mo.
England Memorial Works, Neosho, Mo.,
Holden Mont. Works, Holden, Mo.,
[fol. 427] Joplin Granite Co., Joplin, Mo.
Kansas City Mont. Co., Kansas City, Mo.,
Kent-Clark, Springfield, Mo.
John H. McCarty Mont. Co., St. Louis, Mo.
Thomas Orr, Richmond, Mo.
Pickel Stone Co., St. Louis, Mo.
Pohl & King, St. Louis, Mo.
Rosenbloom Mont. Co., St. Louis, Mo.
A. W. Sandring, Lexington, Mo.
Winton Mont. Works, Poplar Bluff, Mo.

COLORADO:

Colorado Survault Co., Grand Junction, Colo.
Evergreen Memorial Co., Colorado Springs, Colo.

COLORADO (Cont'd)

Fort Collins Mont. Co., Fort Collins, Colo.
G. & L. Granite Co., Denver, Colo.
Greeley Mont. Works, Greeley, Colo.
Jacques Bros., Denver, Colo.
Marvin Memorials, Pueblo, Colo.
Draper P. Smith, Longmont, Colo.
Watson Memorial Co., Denver, Colo.

NO. DAKOTA:

Wahpeton Mont. Wks., Wahpeton, No. Dakota
Dakota Mont. Co., Fargo, No. Dakota.

SO. DAKOTA:

W. N. Rapalee, Yankton, So. Dakota.

LOUISIANA:

Louisiana Mont. Co., Shreveport, La.

ARKANSAS:

John C. McHaney & Son, Blytheville, Ark.
Putman Funeral Home, Ft. Smith, Ark.,
Wilkerson Mont. Co., DeQueen, Ark.

NEBRASKA:

E. W. Schmidt & Son, Blair, Nebraska
Paine Mont. Co., Grand Island, Neb.
Potthast Mont. Co., Norfolk, Nebr.,
Svoboda Mont. Co., Omaha, Neb.

WYOMING: None

[fol. 428] APPLICANT'S EXHIBIT NO. 23

JONES BROS.

POOL CAR SHIPMENT RECORD SHOWING ELAPSED TIME BETWEEN FINISHING WORK AND SHIPPING DATE.

LEE M. BOGLE CO., MINNEAPOLIS, MINN.

1534–62533 FINISHED 3/22/51
SHIPPED 5/11/51

1534–66451 FINISHED 1/29/52
SHIPPED 4/5/52

1534–66452 FINISHED 2/13/52
SHIPPED 4/5/52

THRANA MEMORIALS, DULUTH, MINN.

126–65189 FINISHED 1/14/52
SHIPPED 4/5/52

128–65190 FINISHED 1/15/52
SHIPPED 4/5/52

128–62522 FINISHED 6/13/51
SHIPPED 8/22/51

WESTLUND MONT. CO., MINNEAPOLIS, MINN.

307–66674 FINISHED 1/10/52
SHIPPED 4/5/52

DAKOTA MONT. CO., FARGO, NO. DAKOTA

518–65774 FINISHED 12/21/51
SHIPPED 4/9/52

GIFFORD MONT. CO., MUSKOGEE, OKLA.

1621–63816 FINISHED 6/11/51
SHIPPED 9/22/51

OKLAHOMA CITY MARBLE & GRANITE CO., OKLA. CITY, OKLA

1050–63476 FINISHED 4/10/51
SHIPPED 9/22/51

1050–61521 FINISHED 10/27/50
SHIPPED 1/8/51

GREAT FALLS, MONT. & VAULT CO., GREAT FALLS, MONT.

804–66727 FINISHED 1/28/52
SHIPPED 4/2/52
804–65798 FINISHED 11/5/51
SHIPPED 4/2/52

[fol. 429] KAIN GRANITE CO., HELENA, MONT.

343–65818 FINISHED 12/12/51
SHIPPED 4/2/52
343–65816 FINISHED 12/5/51
SHIPPED 4/2/52
343–65815 FINISHED 11/26/51
SHIPPED 4/2/52

GREELEY MONT. WORKS, GREELEY, COLORADO

1662–66070 FINISHED 12/10/51
SHIPPED 4/17/52
1662–66069 FINISHED 1/11/52
SHIPPED 4/17/52

LEYDA-BURRUS & METZ, BURLINGTON, IOWA

1088–61506 FINISHED 4/13/51
SHIPPED 8/2/51

WHITNEY MONT. WORKS, FAIRFIELD, IOWA

170–66152 FINISHED 11/21/51
SHIPPED 3/27/52
170–66151 FINISHED 2/22/52
SHIPPED 3/27/52

PAINE MONT. CO., GRAND ISLAND, NEBRASKA.

309–62086 FINISHED 12/7/50
SHIPPED 4/21/51
309–62085 FINISHED 12/1/50
SHIPPED 4/21/51

E. W. SCHMIDT & SON, BLAIR, NEBRASKA

94–66135 FINISHED 1/16/52
SHIPPED 3/25/52
94–66136 FINISHED 2/6/52
SHIPPED 3/25/52

Rodriguez Bros., San Antonio, Texas
502–63289 Finished 2/7/51
Shipped 8/9/51
502–63288 Finished 7/12/51
Shipped 8/9/51

Youngblood Memorial Co., Greenville, Texas
1515–63291 Finished 5/28/51
Shipped 8/30/51
1515–63290 Finished 2/28/51
Shipped 8/30/51

Wilkerson Mont. Co., De Queen, Arkansas
1603–62588 Finished 3/1/51
Shipped 5/17/51

[fol. 430] Applicant's Exhibit No. 24

ROCK OF AGES

Dealer List

States.	C/L Dlrs.	L.C.L. Dlrs.	Weight of Shipments 3 yr. Ave. '49, '50, '51.
South Dakota	2	2	224,000
North Dakota		1	16,000
Wyoming		4	41,600
Wisconsin	1	16	244,000
Missouri	4	16	589,600
Nebraska	2	7	236,000
Arkansas	3	4	173,600
Louisiana	3	4	108,000
Minnesota	1	7	127,000
Montana		8	74,400
Colorado	1	3	63,200
Illinois	6	41	1,312,000
Iowa	6	15	672,000
Oklahoma	4	11	212,000
Texas	8	21	720,000
Kansas	4	8	465,184
Total	45	168	5,278,584

[fol. 431]

	Carload Dealers	*L.C.L. Dealers*
ILLINOIS:	Pontiac Granite Co., Pontiac, Ill.,	Boese & Son, Hillside, Ill.
	Westville Mt. Co., Westville, Ill.,	C. Cilella & Son Chicago, Ill.,
	Thurmond Mt. Co., Marion, Ill.,	Eifel Mt. Co., Chicago, Ill.,
	Pioneer Mem. Wks., Chicago, Ill.,	Elgin Granite Wks. Elgin, Ill.,
	E. Wunderlich Gr. Co. Joliet, Ill.,	Gall & Co., Chicago, Ill.,
	Bertacchi & Co., Hillside, Ill.,	Gaynor Mt. Co., Evanston, Ill.,
		Goldman Alves Mts. Chicago, Ill.,
		Hackett & Son Chicago, Ill.,
		Arthur T. Haertel Chicago, Ill.,
		Hoefner Bros., Elmhurst, Ill.
		Namin Monu. Wks. Chicago, Ill.,
		Katz-Goldman Memorials Norridge, Ill.,
		F. N. King & Son Sandwich, Ill.,
		A. W. Kistenbroker Forest Park, Ill.,
		A. F. Lohmann Aurora, Ill.,
		Meier Granite Co., Chicago, Ill.,
		Mendota Mt. Co., Mendota, Ill.,
		Midwest M. & G. Hillside, Ill.,

ILLINOIS (Cont'd)	*Carload Dealers*	*L.C.L. Dealers*
		Maurice Moore Worth, Ill.,
		M. Moore, Chicago, Ill.,
[fol. 432]		Mt. Olive Mt. Works Chicago, Ill.,
		A. O. Novander Chicago, Ill.,
		Pechar & Son Chicago, Ill.,
		C. J. O'Neil Hillside, Illinois
		Otto Reich Mt. Co., Forest Park, Ill.,
		St. Casimir Mt. Co., Chicago, Ill.,
		St. Mary's & Evergreen Evergreen Park, Ill.,
		W. M. Thomas Mt. Co., Ottawa, Ill.,
		Zoia Monument Works Woodstock, Illinois
		Robert Trigg & Sons Rockford, Illinois
		T. A. Wachtel & Son Mt. Carroll, Illinois
		Triebel & Sons Peoria, Illinois
		McFall Monument Co., Galesburg, Illinois
		S. P. Atkinson Mt. Co., Champaign, Illinois
		Westville Mt. Works Westville, Illinois

ILLINOIS (Cont'd)	*Carload Dealers*	*L.C.L. Dealers*
		Krumsiek Memorials Taylorville, Illinois
		Clark Memorial Shop Newton, Illinois
		Sanders Mem. Works Centralia, Illinois
		Decatur Monument Co. Decatur, Illinois
		Stewart Memorials, Mattoon, Ill.,
[fol. 433]		
IOWA:	Holden Mt. Company Cherokee, Iowa	Carroll M. & G. Wks. Carroll, Iowa
	Kallin-Peterson Mt. Co., Fort Dodge, Iowa	Harlan Monument Works Harlan, Iowa
	Decorah Granite Wks. Decorah, Iowa	Perry Granite Works Perry, Ia.
	Iowa Memorial Co., West Liberty, Ia.	Beringer Mt. Works Hampton, Iowa
	Hall Monument Co. Sioux City, Ia.	Charles City Gr. Wks. Charles City, Iowa
	Des Moines Monuments Des Moines, Iowa	Matt Gruben & Sons Waverly, Iowa
		Grinnell Monument Co., Grinnell, Iowa
		Winterset Mt. Co., Winterset, Ia.
		Dunn Monument Works Chariton, Iowa
		Ottumwa Granite Works Ottumwa, Iowa
		Leyda, Burrus & Metz Burlington, Iowa
		L. V. Case Memorials Mt. Pleasant, Iowa

Iowa (Cont'd)	*Carload Dealers*	*L.C.L. Dealers*
		Monticello Mt. Co., Monticello, Iowa
		Kroese Mt. Company Red Oak, Iowa
		Shricker Mt. Co., Davenport, Iowa
[fol. 434]		
South Dakota:	A. L. Green Mt. Wks. Sioux Falls, S. Dak.	Deadwood Granite Wks. Deadwood, S. D.,
	Huron M. & Gr. Wks. Huron, So. Dak.	Aberdeen Mt. Co. Aberdeen, S. D.
North Dakota:		Jack Monument Co. Minot, N. D.
Wyoming:		Casper Monument Co. Casper, Wyo.
		Wyoming Monument Co. Cheyenne, Wyo.
		Big Horn Granite Wks. Sheridan, Wyo.
		Bib Horn Granite Wks., Basin, Wyo.
Wisconsin:	Dodgeville Mt. Co., Dodgeville, Wisc.	P. H. Hamerly & Son Menomonie, Wisc.
		Johnson Mt. Co. Chippewa Falls, Wisc.
		Johnson Mt. Co. Eau Claire, Wisc.
		Wausau Mt. Wks. Wausau, Wisc.
		Van Gemert Memorials West de Pere, Wisc.
		G. Reinke & Co., Oshkosh, Wisc.
		Vach-Werner Mt. Co. LaCrosse, Wisc.
		S. A. Collins Mt. Co., Reedsburg, Wisc.

	Carload Orders	*L.C.L. Dealers*
WISCONSIN (Cont'd)		Beaver Dam Monument Co. Beaver Dam, Wisc.
		P. L. Gehl & Co., Hartford, Wisc.
		Architectural Cy? Co., Milwaukee, Wisc.
		Shaefer & Co., Milwaukee, Wisc.
		Robt. J. Schmidt Memorials Milwaukee, Wisc.
[fol. 435]		Grindell Gr. Wks. Platteville, Wisc.
		Gramke Mt. Works Janesville, Wisc.
		Jackson Mt. Corp. Beloit, Wisc.
MISSOURI:	Kansas City Mt. Company Kansas City, Mo.	Sloan Monument Works Cameron, Missouri
	Clinton L. Allen Maryville, Mo.	Moore Monument Co. Chillicothe, Mo.
	Stanze Mt. Co. St. Louis, Mo.	Redwell Granite Works Shelbina, Mo.
	Breen-Thomas Mt. Co. St. Louis, Mo.	McMein Mt. Company Hannibal, Mo.
		Walker Audlsey Glasgow, Mo.,
		Chas. A. Dunkelberg Fulton, Mo.
		Heynen Mt. Co. Sedalia, Mo.
		Frank Waye St. Charles, Mo.
		Washington Mt. Co. Washington, Mo.

	Carload Dealers	L.C.L. Dealers
Missouri (Cont'd)		Shea-Morris Mt. Co., Springfield, Mo.
		Reeder Memorials Lexington, Mo.
		Winton Monument Works Poplar Bluff, Mo.
		Pohl & King Mt. Co., St. Louis, Mo.
		Bastel Art Memorial Co. St. Louis, Mo.
		Festus-Crystal Mt. Co. Festus, Missouri
		Modern Mt. Works Rolla, Missouri
{fol. 436]		
Nebraska	Palmer Bros. Mt. Co. Holdrege, Nebraska	Herstead Mt. Company Scottsbluff, Nebraska
	C. E. Speidell & Son Lincoln, Nebraska	North Platte Mt. Co. North Platte, Nebraska
		Scheffel & Sons Grand Island, Nebraska
		Feis Memorial Works Hastings, Nebraska
		Potthast Monument Co. Norfolk, Nebraska
		Walther Monument Co. Fremont, Nebraska
		Omaha Monument Company Omaha, Nebraska.
Arkansas:	Camden Mt. Works Camden, Arkansas	Ferguson Mt. Works Morrilton, Ark.
	Gifford M. & Gr. Wks. Fort Smith, Arkansas	Norman Memorials Jonesboro, Ark.

	Carload Dealers	L.C.L. Dealers
ARKANSAS (Cont'd)	Pine Bluff Mt. Co. Pine Bluff, Ark.	Jno. C. McHaney Blytheville, Ark.
		Springdale Mt. Company Springdale, Ark.
LOUISIANA:	Allen Monument Company Shreveport, La.	Allen Mt. Co. of Monroe West Monroe, La.
	Louisiana Mt. Company Shreveport, La.	Pineville M. & G. Pineville, La.
	Acme Memorial Company New Orleans, La.	Dugas Burial Vault Co. Lafayette, La.
		Solari Mble. & Gr. Wks. Lake Charles, La.
[fol. 437]		
MINNESOTA	Lee M. Bogle Company Minneapolis, Minn.	Greene, Grignon & Peterson Duluth, Minn.
		St. Croix Mt. Works Stillwater, Minn.
		McGraw Mt. Works LeSueur, Minn.
		Lewiston Mt. Co. Lewiston, Minn.
		Blue Earth Mt. Co. Blue Earth, Minn.
		Star Granite Works Albert Lea, Minn.
		Austin Memorials Austin, Minn.
MONTANA		Garden City Gr. Co. Missoula, Montana
		Great Falls Mt. Co. Great Falls, Mont.,
		Butte Tombstone Co. Butte, Mont.

MONTANA (Cont'd)	*Carload Dealers*	*L.C.L. Dealers*
		Trevillion-Johnson Memorials Butte, Mont.
		Bozeman Monument Works Bozeman, Mont.
		Livingston M. & G. Wks., Livingston, Mont.
		Rummel Mt. Works Helena, Mont.
		Billings Monument Co. Billings, Mont.
COLORADO	Colorado Su-vault Co., Grand Junction, Colo.	Draper P. Smith Longmont, Colorado
		Sterling Monument Co. Sterling, Colo.
		Wilhelm Monument Co. Colorado Springs, Colo.

[fol. 438]

OKLAHOMA	Woodward Monument Co. Woodward, Okla.	Hahn Bros. Memorial Co. Blackwell, Okla.
	Chickasha Mt. Co. Chickasha, Okla.	Stillwater Memorial Co. Stillwater, Okla.
	Tulsa Mt. Co. Tulsa, Okla.	Guthrie Mt. Co. Guthrie, Okla.
	Acme Memorial Co. Clinton, Okla.	F. E. Arnold Mt. Co. El Reno, Okla.
		Muskogee M. & G. Wks. Muskogee, Okla.
		Shawnee Memorial Works Shawnee, Okla.
		Okla. City M. & G. Oklahoma City, Okla.

	Carload Dealers	L.C.L. Dealers
OKLAHOMA (Cont'd)		Capitol Hill Mem. Co. Oklahoma City, Okla.
		Gifford Mt'l. Works Ada, Okla.
		Lawton Monument Wks. Lawton, Okla.
		Vernon E. Torrance Ardmore, Okla.
KANSAS:	Memorial Art Co. Salina, Kansas	D.O. Sellers Mt. Wks. Paola, Kansas
	Memorial Art Co. Dodge City, Kansas	Lawrence Memorial Co. Lawrence, Kansas
	R. W. Park & Sons Wichita, Kansas	Hutton Mt. Works Topeka, Kansas
	ElDorado Mt. Co. ElDorado, Kansas	J. L. Scott Marion, Kansas
		Great Bend Mt. Co. Great Bend, Kansas
		Caton's Mem. Works Winfield, Kansas
		J. J. Norton Newton, Kansas
		Williams Mt. Works Iola, Kansas
[fol. 439]		
TEXAS	South Plains Mt. Co. Lubbock, Texas	South Plains Mt. Co. Plainview, Texas
	Reneau Memor. Service McKinney, Texas	A. G. Deatherage & Son Wichita Falls, Texas
	Grigson M. & G. Wks. Texarkana, Texas	Gainesville M. & G. Gainesville, Texas
	Rodriguez Bros. Mem'ls. San Antonio, Texas	DeWeese Monument Co. Paris, Texas

TEXAS (Cont'd)	*Carload Dealers*	*L.C.L. Dealers*
	Corpus Christi Memorials Corpus Christi, Texas	Geo. A. Bergin & Sons Sulphur Springs, Texas
	Memorial Arts, Inc. Houston, Texas	Youngblood Memorial Co. Greenville, Texas
	Memorial Arts El Paso, Texas	Monumental Arts, Inc. Dallas, Texas
	Miller Memorials Victoria, Texas	Forth Worth Mt. Co. Fort Worth, Texas
		E. C. Routh & Son Ft. Worth, Texas
		Alex. Rawlings & Son Weatherford, Texas
		Young County Mt. Co. Graham, Texas
		Hallam Memorials Wills Point, Texas
		Vance Burks Tyler, Texas
		Marshall M. & G. Wks., Marshall, Texas
		Geo. P. Partin & Son Nacogdocjes, Texas
		Gould Mt. Works Jacksonville, Texas
		Henderson Granite Co. Henderson, Texas
		Smith Monumental Works Waco, Texas
		Robinson Mt. Co. San Angelo, Texas
		Valley Memorial Co., McAllen, Texas
		Osgood Mt. Co., Amarillo, Texas

[fol. 440] INTERSTATE COMMERCE COMMISSION

Served FEB 10 1953

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest, within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 10 days after the final date for filing exceptions.

Any new operation to be authorized by the recommended order herein if it becomes effective may not be commenced until such time as the certificate, permit, or license has actually been issued. The certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice to that effect, signed by the Secretary of the Commission, has been received.

No. MC–93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE

Submitted ..... Decided .....

Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, of

granite, manufactured and rough, (1) from points in Grant County, S. Dak., to points in 10 described States and the District of Columbia, and (2) from points in Washington and Orange Counties, Vt., to points in 16 specified States, over irregular routes. Issuance of a certificate approved upon compliance by applicant with certain conditions and application in all other respects denied.

Donald A. Morken and *J. L. Hetland* for applicant.

Frank M. Coyne, R. W. Cronon, James G. Lane, and *Claude G. Metzler* for protestants and interveners in opposition to the application.

REPORT AND ORDER

RECOMMENDED BY RICHARD H. ROBERTS, EXAMINER

By application filed May 28, 1951, as amended at the hearings, A. W. Schaffer, of Revillo, S. Dak., doing business [fol. 440a] as Schaffer Transportation Company, seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, of granite, manufactured and rough, (a) from points in Grant County, S. Dak., to points in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, Texas, Arkansas, Louisiana, Wyoming, North Dakota, and the District of Columbia, and (b) from points in Vermont, to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, over irregular routes. Granite City Transfer, Class I Rail Carriers in Western Trunk Line Territory, New England Territory Railroads, Texas Railroad Association, and Eastern Railroads (except the Chesapeake & Ohio Railway) oppose the application.

In accordance with the provisions of the Interstate Commerce Act, the application was referred to the examiner for hearing and the recommendation of an appropriate order thereon. Hearing was held on June 13, 1952, at St. Paul, Minn. Prior to the issuance of the examiner's recommended order applicant petitioned for further hearing. Good cause

appearing therefor, by order dated September 19, 1952, the matter was reopened for further hearing. Further hearing was held on December 2, 1952, at Washington, D. C.

Applicant is presently authorized, among other things, to transport granite from points in Grant County to points in Montana, Colorado, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, and to render return movements of silicon carbide, from Niagara Falls, N. Y., steel shot from Mansfield, Ohio, and polishing stucco, from Fort Dodge, Iowa and Chicago Heights, Ill., to points in Grant County, over irregular routes. He also performs certain regular route operations in Minnesota and South Dakota, in the transportation of general and special commodities. By the instant application, he seeks to extend his granite operations out of Grant County, to Montana and Wyoming points, and to points in the named southwestern and eastern States, as well as to obtain return loads of granite from Vermont origins that are destined to the 16 States involved. Applicant will have no backhaul from the Texas-Louisiana territory but intends to deadhead from extreme eastern destinations to the Barre, Vt. granite producing area to pick up traffic on westbound movements.

Applicant is also engaged in a number of profitable private enterprises separate and apart from the above-described motor common carrier operations. He operates a garage at Alby, S. Dak., is engaged in farming, and is a wholesale distributor of feed and other products for the Ca[illegible] Salt Company. He asserts that he maintains separate books on all of his operations. He operates a total of 14 units of equipment, plus a spare tractor. Nine of these units and the spare tractor are used in the for-hire transportation business, of which six are assigned exclusively to the movement of granite. Four units are used in the private operations. About 90 percent of applicant's time is devoted to his for-hire motor carrier operations. As of December 31, 1951, applicant shows total assets of $38,414, total liabilities of $16,448, leaving a net worth of $21,965. At the further hearing he admitted considerably more net profit for 1952 than for 1951. Applicant is fit and

able, financially and otherwise, properly to conduct any operations hereinafter authorized.

[fol. 441] There are three granite fabricating plants in the South Dakota area some of which have quarry and finishing plants at separate locations.

In 1951, applicant transported 157 loads of granite out of Grant County. He presently has one load a week destined to New York and Pennsylvania areas and frequently operates empty on return. Should the authority herein sought be granted he proposes to station a dispatcher and several pieces of equipment either at Barre or Montpelier, Vt., and to perform a "shuttle" service between the South Dakota and Vermont origins. He usually knows a week in advance as to any outbound movement of granite and considers he will have ample time to dispatch sufficient equipment wherever it may be needed. Applicant now offers third-day delivery from Grant County origins to points in Illinois, Indiana, and western Ohio, and fifth-day delivery to upstate New York points. He estimates that an additional day will be required to serve the proposed New England points and from five to eight days enroute to the southern and eastern destinations. Approximately the same transit time is estimated for operations westward out of Vermont in the reverse order. In the past applicant has leased his equipment to other parties for return loads but has found such arrangements unsatisfactory. He will discontinue these practices if the authority sought herein is granted.

The consignees served by applicant are primarily monument dealers whose display lots may be located in suburban or rural areas. Only three of his present granite customers are located on rail sidings. His present shipper is located at Milbank, (Grant County), S. Dak., and is several miles from existing rail facilities. Where only one stop is involved, applicant finds loading simple, but where multiple stops are involved, it becomes more difficult because the unloading is from the middle instead of the rear of a vehicle. Skids and hoists are used and sometimes foam rubber pads, on highly damageable merchandise. Granite is easily chipped and must be handled with care. In 1951, applicant had only two damage claims, totaling $150. The

volume of a load varies from a 24,000 pound minimum to a 33,000 pound maximum. A large percentage of the loads are split-deliveries. Eighty percent of the tonnage is finished granite, 10 percent semi-finished and 10 percent rough stone. South Dakota granite is reddish in color as compared to the Vermont product which is a gray granite.

Applicant believes that a grant of the authority sought herein will be favorable to his existing operations both servicewise and financially. It would improve his return-haul problems from the east by the elimination of a certain amount of empty mileage. He also claims to have lost a substantial amount of traffic because of his inability to serve the proposed eastern destinations. He alleges that no other granite motor carrier has equipment stationed in Grant County at the present time and he knows of no carrier operating a single-line service from the Barre area to the involved destination States.

The Dakota Granite Company of Milbank, is a wholesale shipper of granite to retail outlets. Grant County, where it has two quarries, contains a ledge of reddish-brown granite that is quarried and finished into mausoleums, monuments, and building granite. Shipper's products pres- [fol. 441a] ently move outbound by truck and by rail in less-carload quantities. It satisfactorily utilizes applicant's services several times a week. However, its facilities are located 6½ miles from a rail siding and it uses its own vehicle to place tonnage at the railhead. Shipper professes a need for applicant's proposed motor carrier service to all points in the 11 described States sought to be served from Grant County, claiming to have salesmen working in the New England States, Texas, Arkansas, North Dakota, Colorado, and West Virginia. It is developing an area in Texas where it cannot expect carload sales immediately and less-carload shipments are too costly for the consignee-dealer. Shipper anticipates only about 24,000 pounds of granite moving to that area a year at the start, and it desires motor carrier transportation in connection therewith. It also has about 35 customers in Connecticut and an unstated number in Massachusetts. New England rail shipments have heretofore taken too long in transit. Orders are now on file covering shipments

of granite (which customers desire truck delivery therefor) to such specific points as New Haven, New Brighton, Bristol, and Waterbury, Conn., Greenfield and Wooster, Mass., and Dallas, Lubbock, Jasper, Paris, and Waco, Tex. Also, a large amount of granite is being shipped to North Dakota for the construction of the Peace Garden near the Canadian Border. Ordinarily, shipper's customers are limited to one at each given point. It would use applicant's proposed service 7 or 8 times a year from Grant County to the New England area and would consolidate shipments destined to points in adjoining States. Shipper has not used intervener Granite City Transfer in the past two years primarily because that carrier's rates are considerably higher than applicant's. Moreover, it prefers the use of a carrier whose equipment is stationed near its place of business. It takes intervener three hours from St. Cloud, Minn., to pick up shipments after a call for service. Customers desire split shipments at a reasonable rate and with fast delivery service. Applicant's service has been fast with very little breakage. When ordinary dry freight carriers are used, shipper has found that the damage to goods is excessive. It also finds that it is more economical to load a motor common carrier vehicle at its fabricating plant with its own crane than to transport a load in its own vehicle seven miles to the railhead for further movement by rail. Furthermore, crating is unnecessary on truck shipments.

Osborne-Peterson, Inc., of St. Paul, is a retail monument dealer which fabricates and letters monuments and markers. Inbound, it receives both rough and finished granite and desires to obtain its Vermont granite faster and in better condition than it is now arriving. A large amount arrives by rail in carload quantities and such service will be continued even if applicant is granted the proposed authority from Vermont. However, consignee occasionally receives a less-carload emergency shipment. Carload traffic transit time ranges from one to 2½ weeks while less-carload traffic ranges from 3½ to 6 weeks, enroute. Recently a shipment composed of five crates, weighing 2,540 pounds, was shipped on April 28 and received on May 27. Four of the crates arrived in good condition and one was broken. A number

of pieces of polished granite were damaged and rendered unfit for the purpose intended. Assertedly adequate pool-car service is not available. Applicant's proposed 5 or 6-day service from Vermont would greatly benefit consignee's [fol. 442] business, which is extremely quiet from November through April but experiences a rush during May because of Memorial Day. Under present circumstances a monument should be delivered sometime in March to assure Memorial Day installation. Dealer's customers prefer Barre granite and applicant's proposed service from Vermont would be utilized at least a half dozen times a year, although there may not always be a complete truckload offered to him. In the past, applicant's service has been used out of South Dakota, and found to be very satisfactory. Admittedly, however, any type of motor carrier service which would deliver its merchandise, within 6 days, from Barre to St. Paul, would satisfy the transportation demands of this consignee.

McCarty Memorials of Hutchinson, Kans., purchases from 40,000 to 60,000 pounds of finished granite a year from Barre manufacturers. Shipments originating at that point move over multiple-rail lines to the Kansas City break-bulk point and then are delivered to consignee at Hutchinson either by local rail service or motor common carrier. It asserts that no through motor carrier service is available from Vermont to Hutchinson and it is interested in obtaining efficient and responsible motor carrier transportation from the named origin area. It would be a distinct advantage to consignee to have less handling of its merchandise in transit since it has experienced considerable breakage on tonnage moving by rail. Moreover, rail shipments must be crated while those moving by motor vehicle need not be. Pool-car shipments from Barre to Hutchinson have been found to take from 14 to 21 days enroute and 3 or 4 days are usually lost at the break-bulk point. Dealer deems an average time for delivery of a shipment from Vermont to be about 10 days. Applicant has assured it, at most, a 9-day delivery service out of Barre. It rarely has need for truckload service but desires less-truckload transportation with split deliveries. Seventy-five percent of its incoming granite is finished and ready for

the customer upon arrival. Generally, consignee's peak period extends from March to June, with April 1, a "cut-off" date for Memorial Day delivery. Available motor carrier transportation such as proposed herein would extend this cut-off time to a later date.

A retail monument dealer in Fremont, Nebr., receives in either pool-car or less-carload quantities, six or seven shipments of granite a year from Vermont, amounting to approximately 25,000 pounds. Because of the size of his business, this dealer considers it advantageous to have motor carrier delivery service. He orders finished stone from the manufacturer whereas a nearby competitor does its own finishing, and in order to meet such competition speedier delivery service is required. Dealer is now receiving granite by motor vehicle from Milbank, St. Cloud, and Cold Spring, Minn. It believes that such service is faster than rail regardless of the distance involved and that there is a real need for applicant's proposed service from Vermont. It is not using applicant out of Milbank because the shipper thereat furnishes its own delivery service. The service of Granite City Transfer has not always been satisfactory and that carrier has never transported any granite from Barre for consignee.

The S. C. Stevenson Monument Works, of Moberly, Mo., uses rail service out of Barre exclusively. Seventeen representative less-carload shipments for 1951, aggregating [fol. 442a] more than 17,000 pounds, averaged 11.5 days in transit, with a minimum of 7 days and a maximum of 18 days enroute. Rail service is considered very good, with little damage to dealer's merchandise, nevertheless, it desires faster and more frequent deliveries during peak seasons. It believes that motor carrier service is more advantageous than rail service and has found multiple-carrier transportation from other origins costly. Intervener, Granite City, service would meet its needs if it were available.

Aberdeen Monument Company of Aberdeen, S. Dak., has need for motor carrier service from Barre. It is unable to stock carload quantities of monuments and pool-car shipments are considered impracticable because of the distance between dealerships. According to consignee, rail

shipments require about 17 days in transit from Barre to Aberdeen and excessive damage to the monuments is experienced on less-carload movements. It considers speedier and more frequent service such as is offered by motor carriage, a distinct business advantage. It would utilize split-deliveries if its tonnage did not warrant a full truckload shipment. Consignee's annual tonnage is about 30,000 pounds.

A retail monument dealer near Rockford, Ill., purchases about 25,000 pounds of custom-designed monuments a year from manufacturers at Barre. These monuments are received monthly in quantities of three or less, and never purchased by the carload. The only transportation service presently available to consignee is by rail. Pool-car shipments break-bulk at Chicago or Proviso, Ill., and the merchandise moves as less-carload freight from there to Rockford where (although consignee is entitled to free delivery to its door) undue delays often occur. As long as one month enroute from Barre to Rockford has been experienced in the movement of the involved monuments, and oil and grease spilled on the markers have also made it necessary to replace complete units. Although all of consignee's business will not be transferred to applicant, it believes that there is a need for motor carrier service from Barre to its place of business.

At the further hearing, Jones Brothers Company and the Rock of Ages Corporation, both of Barre, offered evidence in support of the application. Jones Brothers Company is engaged primarily in the manufacture of granite monuments known as "Guardian Memorials" which are marketed throughout the United States. Ninety percent of its total shipments originate at Barre. In 1951, approximately 1,600,000 pounds of granite moved to destinations in the 16 States sought as destination territory herein. Of this amount 600,000 pounds were less-carload freight. Carload shipments by rail have proven satisfactory, pool-car shipments not entirely satisfactory, and less-carload shipments unsatisfactory. The last named method of transportation is not only costly but takes too long enroute, and shipper has received complaints relative to damage to goods when so moving. It asserts that many small

dealers cannot handle carload tonnage and as a consequence are changing their buying habits by purchasing granite at centers where faster service and cheaper transportation costs are available. It considers this trend a detriment to the granite industry of Vermont. Shipper has available [fol. 443] motor carrier service to New York and Pennsylvania destinations but has none to the destinations involved herein. The availability of a motor carrier performing 6-day-direct-line service to the considered midwest points would be a convenience. Shipper believes that in competing with granite manufacturers located at other origins, it and other manufacturers in the Barre area are handicapped by a lack of such service. It contemplates engaging in private motor carriage if the authority sought herein is not granted. It desires outbound motor carrier transportation on a daily basis, if possible, but has no objection to the consolidation of its freight with that of other Barre granite manufacturers. About 3,000 pounds a day will be available to applicant from this shipper. Applicant has indicated that he will provide service to shipper several times a week and the latter understands that a truckload of granite a day out of Barre is an anticipated volume. All tonnage would originate either at Barre or points within a 5-mile radius thereof. Shipper presently supplies Osborne-Peterson of St. Paul and McCarty Memorials of Hutchinson.

Rock of Ages Corporation quarries granite and manufactures finished monuments and markers which are distributed throughout the United States. It has a plant at Montpelier and another at Northfield, Vt., where shipments move outbound. It is endeavoring to build up its distribution to dealers, particularly those in the 16 States in question. Over 5,000,000 pounds a year are currently shipped to dealers in this 16-State territory, of which 45 purchase in carload quantities, and 168 buy in less-carload amounts. The latter type of shipments are not satisfactory because of delays in transit, damage to the goods, and otherwise rough handling. Pool-car shipments are not considered satisfactory because it is difficult for a dealer to whom the merchandise is consigned to pay the freight charges on an entire car. Considerable rehandling of

tonnage is also required because of lack of rail sidings. Shipper could offer applicant two or more truckloads (ranging from 24,000 to 30,000 pounds each) a week on westbound traffic. It now utilizes motor carrier transportation throughout New England and portions of New Jersey, Pennsylvania, and New York, but not west of a line drawn between Buffalo, N. Y., and Pittsburgh, Pa. Its products are sold to all of the supporting dealers herein with the exception of the consignee at Moberly, Mo. Shipper believes that the use of applicant's proposed service out of Vermont will enable it to get its merchandise to its dealers faster and the latter will not have to tie-up capital in large shipments. It also claims that there is a need for faster and more frequent service out of Barre in order to give the customer a choice of size and design which is not presently feasible under existing transportation conditions. Then again, motor carrier transportation would enable salesmen to obtain new orders and expand their sales area, particularly in such States as Missouri, Oklahoma, Texas, Arkansas, Nebraska, Iowa, and Minnesota.

The Barre Granite Association, whose traffic department is known as the Barre Guild Consolidation Service, is a trade association consisting of 77 member-companies, located in the Barre granite producing area. Five of these members are carriers, 5 do custom sawing and polishing of granite only, and the remaining 67 are manufacturers of finished granite products. Among the larger members of the association are Rock of Ages and Jones Brothers. The function of the association is to represent its members in matters of traffic and shipping and the Guild consolidates [fol. 443a] shipments of granite for pool-car movements out of Barre to points throughout the United States. During the period extending from December 1, 1950 to December 1, 1951, it shipped 268 cars of granite to 900 dealers in 25 States, 156 cars of which were destined to points involved herein. This traffic moved to such break-bulk points as Chicago, Kansas City, St. Louis, Mo., Springfield, Ill., and Davenport, Iowa. Any delays encountered in the movement of this tonnage renders the consolidation service of the Guild inefficient. The only motor carriers se-

lected by the Guild are those used at each end of a rail movement in pick up and delivery service. The Barre and Chelsea Railroad serves the quarries and a substantial portion of its revenue is derived therefrom. The Barre Granite Association does not contemplate discontinuing rail service.

At a further hearing, a representative of the Barre Granite Association indicated that he was delegated by written authorization to represent at least 18 of the member-companies and that the position of these members is substantially the same as that of supporting-shippers Rock of Ages and Jones Brothers. He further asserts that at least 25 or 30 member-companies in the Barre area need the proposed service. The 18 shipper-members represented have a total of more than 1,000 dealers in the 16-State destination area under consideration to which approximately 17,000,000 pounds of granite were shipped in 1951. Witness knows of no direct or connecting-line motor carrier service out of Barre to this mid-western territory. Moreover, he claims that the industry as a whole is not interested in interline motor carrier service due to the fact that granite, because of its size, weight, and susceptibility to damage, is a commodity which cannot be the subject of multiple-handling. The Guild members insist that direct-line service be obtained. The source of supply for granite in Vermont is limited to Washington County (Barre area) and to Williamstown, Orange County.

Granite City Transfer of St. Cloud, is engaged in the transportation of granite, both rough and finished, by motor vehicle. It is authorized, among other things, to transport (1) finished monumental and structural or partially finished granite, over irregular routes, from points in Stearns County, Minn., and Grant County, to points in New York east of New York Highway 96, those in Pennsylvania east of U. S. Highway 15, and to points in New Jersey, Delaware, New Hampshire, Maryland, Vermont, Kentucky, Missouri, Kansas, Oklahoma, District of Columbia, Connecticut, Massachusetts, and Rhode Island, and (2) rough and manufactured granite, between points in Stearns, Wright, and Isanti Counties, Minn., Grant County, and Ashland County, Wis., on the one hand, and, on the

other, points in Minnesota, Wisconsin (except Marathon County), Iowa, Illinois, Nebraska, South Dakota, Indiana, Michigan, Ohio, that portion of Pennsylvania on and west of U. S. Highway 15, and that portion of New York on and west of New York Highway 96, over irregular routes. It operates approximately 10 units of equipment and offers 5 or 6-day service from points in Grant County to points in Vermont, Massachusetts, Connecticut, Maryland, and the District of Columbia. Its headquarters are located about 140 miles from Grant County and asserts it usually has from 2 to 6 days' notice from a shipper relative to a movement of granite outbound from that area. Intervener [fol. 444] asserts that it has received no complaints as to its service from shippers in Grant County and until 18 months prior to the first hearing herein it served the supporting shipper, Dakota Granite Company. Intervener presently transports granite from Milbank for another shipper. However, it has no authority to transport granite from Vermont origins although it admittedly transported two loads from such origins in 1952, without appropriate authority. It averages about 10 loads a month out of Grant County, and possibly 30 loads out of the St. Cloud area. Intervener claims to be ready and able to handle traffic out of Grant County with its present equipment, particularly any moving by private carriage, and believes that it would lose at least two loads of granite a month destined to the involved eastern territory if applicant obtained the authority sought herein. Intervener also claims to have lost business due to a rate differential when applicant obtained its present operating authority out of Grant County.

Evidence was also submitted in opposition to the application on behalf of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, the Texas and New Orleans Railroad Company, and the Central Vermont Railway Company. Milbank, S. Dak., is on the main line of the Milwaukee Railroad, from which point it renders direct service to Chicago where it connects with a number of other rail carriers for service to the points and areas involved in the application. The Texas and New Orleans Company is primarily concerned with the proposed transportation by applicant from Grant County and Vermont to points in

Louisiana and Texas throughout which destination area it offers both rail and motor carrier service. The Central Vermont Railway originates traffic in granite at four of its stations, namely, Barre, Montpelier, Northfield, and Waterbury, Vt., and competes with the Barre and Chelsea Railroad for the outbound movement of granite from that area. All of these rail carriers are ready and able to handle the traffic considered herein and regard the granting of the instant application as having a future adverse affect on their operating revenue.

The shippers or receivers supporting the application have experienced difficulty in obtaining the type of service which best meets their transportation needs. In the past, rail service has been a predominant means of delivering the freight involved but the use of rail service has not been, except in carload quantities, entirely satisfactory, principally because of delays in transit, damaged goods, and lack of proper rail sidings. No motor carriers oppose the application insofar as the proposed operation from Vermont is concerned and only one objects to the proposed extension from Grant County. The Barre area shippers complain that there is no motor carrier service available to them for the proper transportation of granite to their involved destinations. Moreover, they assert, the changing competitive situation in the destination territory makes it necessary that this traffic move by motor vehicle as well as by rail. The commodity involved requires careful handling and interchange is not feasible. As seen, applicant now satisfactorily serves the supporting shipper from Grant County and that shipper complains of unsatisfactory conditions existing when shipping by rail to the destination area covered by this portion of the application. It believes that applicant is in a better position to handle its traffic than intervener Granite City Transfer (which service has not been utilized for two years) and existing dry [fol. 444a] freight motor carriers. Applicant is located near its place of business and can more efficiently handle consolidated shipments moving to both presently served destinations and those sought herein.

Authorizing the proposed operations to the extent hereinafter indicated will enable applicant to render a complete

service to all the shippers' destination points in accordance with their requirements. The difficulties experienced by them would be overcome by the use of such a direct motor carrier service. Applicant has the experience, skill, and facilities to satisfy the shippers' requirements. All things considered, the examiner concludes that a need has been shown for the proposed service to the extent indicated in the findings herein. Undoubtedly, a grant of such authority will result in the diversion of some traffic from the opposing rail carriers, but it appears that such diversions will not be so substantial as to impair materially their operations. Moreover, the authority granted herein will have no material adverse affect on any motor carriers, including intervener Granite City Transfer.

The examiner finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of granite, rough and finished, (1) from points in Grant County, S. Dak., to points in Wyoming, North Dakota, Texas, Arkansas, Louisiana, West Virginia, Maryland, Connecticut, Massachusetts, Vermont, and the District of Columbia, and (2) from points in Washington and Orange Counties, Vt., to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana, over irregular routes; that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the rules and regulations of the Commission thereunder; that a certificate authorizing such operations should be granted; and that the application in all other respects should be denied.

In view of the findings herein, the examiner recommends that the appended order be entered.

By Richard H. Roberts, Examiner.

(Signature) Richard H. Roberts

[fol. 445] Recommended by Richard H. Roberts, Examiner.

(Signature) Richard H. Roberts

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the day of A. D. 1953.

No. MC–93529 (Sub-No. 2)

A. W. SCHAFFER EXTENSION—GRANITE

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by the examiner, who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with the requirements of sections 215 and 217 of the Interstate Commerce Act, and with our rules and regulations thereunder, a certificate be issued to applicant authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle of the commodities described, and in the manner described in the findings in the said report.

It is further ordered, That the application in all other respects be, and it is hereby, denied.

And it is further ordered, That this order shall be effective on

By the Commission, division 5.

George W. Laird, Acting Secretary.

(SEAL)

[fol. 729] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

Civil No. 624 N.D.

A. W. SCHAFFER, d/b/a SCHAFFER TRANSPORTATION COMPANY,

and

AMERICAN TRUCKING ASSOCIATIONS, INC., Plaintiffs,

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, Defendants.

OPINION—March 13, 1956

Donald A. Morken, Minneapolis, Minn., (R. G. May, Sioux Falls, S.D., with him on the brief), Attorneys for Plaintiff, Schaffer.

Peter T. Beardsley, Washington, D.C., Attorney for American Trucking Associations, Inc.

H. Neil Garson and Robert W. Ginnane, Washington, D.C., Attorneys for Interstate Commerce Commission.

James E. Kilday and Edward Knuff, Washington, D.C., (Stanley N. Barnes, Assistant Attorney General and Clinton G. Richards, United States Attorney, with them on the brief), Attorneys for United States of America.

Robert J. Bernard, and H. F. Chapman, Sioux Falls, S.D., R. W. Cronon, Joseph Hays and Carl Helmetag, Jr., Philadelphia, Pa., James G. Lane, Amos N. Mathews and James W. Nisbet, Chicago, Ill., Attorneys for Intervening Railroads.

Before VOGEL, Circuit Judge, and MICKELSON and DEVITT, District Judges.

MICKELSON, District Judge.

This statutory three-judge court action was brought by the plaintiffs to set aside the report and order of the Inter-

state Commerce Commission pursuant to Sec. 205(g) of the Interstate Commerce Act, 49 USC, Sec. 305(g), Sec. 10, [fol. 730] of the Administrative Procedure Act, 5 USC, Sec. 1009 and Sec. 1336, 1398, 2284, 2321 to 2325, of the Judicial Code, 28 USC, Sec. 1336, 1398, 2284 and 2321-2325, incl. That report and order was entered by the Commission in Docket No. MC-93529 (Sub. No. 2), A. W. Schaffer Extension—Granite.

The applicant, A. W. Schaffer, d/b/a Schaffer Transportation Company, sought authority to operate as a common carrier by motor vehicle in interstate or foreign commerce, over irregular routes, in the transportation of granite, manufactured and rough:

(1) From points in Grant County, South Dakota, to points in West Virginia, Maryland, Connecticut, Massachusetts, Vermont, Texas, Arkansas, Louisiana, Wyoming, North Dakota and the District of Columbia;

(2) From points in Vermont to points in South Dakota, Minnesota, North Dakota, Montana, Wyoming, Colorado, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas and Louisiana.

The original hearing on the application before an examiner for the Commission was held June 13, 1952. Prior to the issuance of the examiner's recommended report and order applicant petitioned for a further hearing. By order dated September 9, 1952, the matter was reopened for further hearing, which was held on December 2, 1952, before the same examiner. Protests against the application were filed by rail carriers in New England territory on June 14, 1951; by Texas Railroad Association and Class 1 Rail Carriers in Southwestern Line territory on June 18, 1951; and by Trunk Line Central territory railroads, except the C. & O. Ry. Co., on July 9, 1951. Wm. Dingmann, d/b/a Granite City Transfer, of St. Cloud, Minn. appeared in opposition to the application in addition to the protesting railroads. At the further hearing, in addition to the parties noted above appearing in opposition to the application, Class 1 Western [fol. 731] Rail Carriers also intervened in opposition thereto.

On February 10, 1952, the examiner issued his report and recommended order that the authority requested by the applicant be granted.

Exceptions to the examiner's report and recommended order were filed by Class 1 Western Trunk Line Rail Carriers, by Wm. Dingmann, d/b/a Granite City Transfer, and by the eastern railroads, except the C. & O. Ry. Co.

Thereafter the Commission, Division 5, with Commissioner Elliott dissenting, issued its report and order, decided May 24, 1954, granting the authority sought by the applicant and as recommended by the examiner except that it denied the authority from Grant County, South Dakota, to points in the states of Maryland, Connecticut, Massachusetts, Vermont and the District of Columbia, because of motor carrier service then in existence furnished by Wm. Dingmann, d/b/a Granite City Transfer, the protesting motor carrier.

Following the report and order of Division 5, a petition for reconsideration, and, in the alternative, a petition for a hearing de nova, was filed by the eastern railroads. A similar pleading was filed by the Class 1 Western Trunk Line Rail Carriers.

By order entered Nov. 12, 1954, the Commission, Division 5, granted the petitions for reconsideration but denied the petitions in all other respects. The entire Commission thereafter took up the matter and on Feb. 7, 1954, entered its order with an accompanying report, denying the application. This is the report and order which is challenged by the plaintiffs herein.

[fol. 732] On March 7, 1955, Barre Granite Assn., Jones Bros., and Rock of Ages Corporation of Barre, Vermont, filed a petition for intervention, oral argument and reconsideration. Schaffer on the same date filed a petition for oral argument and reconsideration. On March 9, 1955, plaintiff, American Trucking Assn., filed a petition for leave to intervene and for reconsideration. Replies to these petitions were filed by eastern railroads, except the C. & O. Ry. Co., and by the Class 1 Western Trunk Line Rail Carriers.

On May 16, 1955, the Commission entered an order permitting the parties seeking intervention to intervene and denying the petitions in all other respects.

On August 8, 1955, plaintiffs filed the instant complaint in this court, seeking to set aside the Commission's report and order of Feb. 7, 1954, which denied authority, and the order of May 16, 1955, which permitted the parties seeking intervention to intervene and which denied the petitions for reconsideration.

The transcript of testimony before the Commission consists of 341 pages and 24 exhibits, in addition to numerous voluminous pleadings which were filed with the Commission for its consideration.

The principal issues raised in this case are whether there is a reasonable and rational basis for the orders predicated upon the findings of the Commission and whether the Commission's actions in the premises complies with the Congressional mandate as set forth in Part 2 of the Interstate Commerce Act. (49 USC 301-327) and the National Transportation Policy, (49 USC, preceding Sec. 1).

The scope of judicial review of the decisions of independent administrative bodies, in this case the Interstate [fol. 733] Commerce Commission, is now well settled and is no longer open to question. The rule may be stated in various ways, one of which is, that findings of fact and permissible conclusions thereon, based upon substantial evidence, are final, conclusive and binding upon the Court. I.C.C. v Union Pacific R.R. Co., 222 U.S. 541, 547-548. In U.S. v Pierce Auto Freight Lines, Inc., 327 U.S. 515, 536, the Supreme Court said that the function of a reviewing court "* * * is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law, or abuse of the Commission's discretion, a reviewing court is without authority to intervene."

In the development of the doctrine and rule of administrative finality, courts have uniformly held that it is the exclusive province and function of administrative agencies to draw legitimate inferences of fact and make findings and conclusions of fact, to appraise conflicting testimony or other evidence, to judge the credibility of witnesses and the evidence adduced by the parties, and to determine the weight of the evidence. Ill. Cent. R.R. Co. v I.C.C., 206 U.S.

441-454; I.C.C. v Union Pacific R.R. Co., supra; Alton R.R. Co v U.S., 315 U.S. 15-23. And what has just been said holds true even though the court believes that the decision of the administrative body lacks wisdom; though the court would weigh the evidence differently and reach a different conclusion from that of the agency; or that the final decision is inconsistent with prior determinations arising under analagous or similar basic circumstances. Rochester Tele. Corp. v U.S., 307 U.S. 125, 146, at p. 139; I.C.C. v Nor. Pac. [fol. 734] R.R. Co., 216 U.S. 538, 544; Ill. Cent. R.R. Co. v I.C.C., supra, p. 454; U.S. v Pierce Auto Freight Lines, Inc., supra.

Sec. 10 of the Administrative Procedure Act, (5 USC, Sec. 1009) has codified the limitations of a judicial review of administrative decisions, and that act is controlling. See Riss & Co. Inc. v U.S., 341 U.S. 907; Wong Yang Sung v. McGrath, 339 U.S. 33; Acme Fast Freight v. U.S., 116 Fed. Supp. 97.

Plaintiffs in this case mainly urge that the Commission's conclusion is not supported by substantial evidence and therefore is unsupported by the record, is arbitrary and contrary to law. They also ask this Court to consider and make findings with respect to the fact that the public is entitled to service by both forms of transportation, trucks and rail.

In final analysis the Commission was required to determine that the proposed service of applicant is or will be required by the present or future public convenience and necessity under 49 USC, 307(a).

The extent of the Commission's authority in matters concerning the grant or denial of a certificate of public convenience and necessity has been considered in numerous judicial decisions and appears to be well settled. In an early leading case, C. & O. Ry. Co. v. U.S., 283 U.S. 35, 42, the Supreme Court said:

> "There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the Act it was the duty of the Commission to find the facts and, in the exercise of a reasonable judgment, to determine that question."

See Also T. & P. Ry. Co. v. Gulf, C. & S.F. Ry. Co., 270 U.S. 266, 273; Colorado v. U.S., 271 U.S. 153, 168; [fol. 735] Powell v. U.S., 300 U.S. 276, 287.

In the case of Interstate Commerce Commission v. Parker, 326 U.S., 60, 65, the Supreme Court stated:

> "Public convenience and necessity is not defined by the statute. The nouns in the phrase possess connotations which have evolved from a half-century experience of the government in the regulation of transportation. When Congress in 1935 amended the Interstate Commerce Act by adding the Motor Carrier Act, it chose the same words to state the condition for new motor lines which has been employed for similar purposes for railroads in the same Act since the Transportation Act of 1920, Section 402(18) and (20), 41 Stat. 477. Such use indicated a continuation of the administrative and judicial interpretation of the language. Cf. Case v. Los Angeles Lumber Co., 308 U.S. 106, 115. The Commission had assumed, as its duty under these earlier subsections, the finding of facts and the exercise of its judgment to determine public convenience and necessity. This Court approved this construction. C. & O. Ry. Co. v. U.S., 283 U.S. 35, 42. Cf. Gray v. Powell, 314 U.S. 402, 411-12. The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor carrier service would serve public convenience and necessity. Cf. Powell v. U.S., 300 U.S. 276, 287. This, of course, gives administrative discretion to the Commission, Cf. McLean Trucking Co. v. U.S., 321 U.S. 67, 87-88, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances."

Plaintiffs herein contend that the public is entitled to service by both forms of transportation, truck and rail, under a proper interpretation of the National Transportation Policy and the provisions of the Interstate Commerce Act.

As to the first contention, the Commission has spoken many times, and very recently in the case of International

Transport, Inc. Extension—Tractors and Farm Machinery, No. MC 113855, and Kenosha Auto Transport Corp. Extension—Racine, Wis., No. MC 30837, Sub. 159, decided Dec. 16, 1955, and subsequent to its decision here under review. In these cases (decided together) the Commission, Division 1, said:

> "The basic issues raised by petitioners are, in substance:
>
> (1) Whether the supporting shippers who allegedly are dependent solely upon rail carriers for transporta- [fol. 736] tion are entitled, as a matter of law, to motor as well as rail service.
>
> (2) Whether each applicant has sustained the burden of proving that the supporting shippers are unable to obtain reasonably adequate service from the existing rail carriers and have a real need for the proposed motor service to supplement rail service."

The Commission did, in those cases, grant the authority sought, and applicant here urges these cases as authority for the contention that if the Schaffer application was before the Commission at the present time, the authority sought would be granted. We do not think these cases can be so interpreted. There the Commission said:

> "At the outset it is well to stress that the mere absence of motor carrier service is not, standing alone, sufficient justification for the granting of an application to institute such service. In numerous proceedings where a grant of motor carrier authority has been made, it has been stated that the public is entitled to both motor and rail service. However, in all such proceedings it has been found, as required by the statute, that public convenience and necessity required the proposed service, and such findings were based on all of the facts of record in each proceeding including the nonexistence of reasonably adequate motor carrier service. Any implication which might be drawn from the report in these proceedings that the mere absence of motor service, without more, is enough to justify a grant of motor carrier authority, is inaccurate."

The Commission there also said, in granting the authority, that the over-all rail service had been something less than reasonably adequate for the supporting shippers' needs. In the present case the full Commission found, upon the question of public convenience and necessity, that existing rail service was "reasonably adequate."

When called upon to review orders of the Commission denying or granting certificates of convenience and necessity based on the adequacy or inadequacy of existing services, the courts have approved the test used by the Commission. Capitol Transit Co. v U.S., 97 Fed. Supp. 614, 620; Hudson [fol. 737] Transit Line v U.S., 82 Fed. Supp. 153, 157; McLean Trucking Co. v. U.S. 63 Fed. Supp. 829, 832.

In confirming this general principle it seems quite clear that the Courts are of the same view as the Commission, namely, that the adequacy of the existing service is to be determined by weighing the needs of the shippers against the capabilities and facilities of the existing carriers without regard to whether the existing service is provided by the railroads or other motor carriers. See I.C.C. v. Parker, supra.

While in the instant case the examiner did recommend the granting of the proposed authority and Division 5 of the Commission in a two to one decision ordered the authority granted (except as to certain points hereinbefore mentioned served by Dingmann), and the full Commission in a six to four decision, with one member not participating, did upon the same record deny the authority; such is not enough for this Court to cancel and set aside the final order of the Commission. The fact that such difference of opinion existed in the minds of the examiner, the members of Division 5 and the full Commission, all experts in the field of public transportation, serves to stress the fact the reasonable minds can and did differ upon the weight of the evidence and the conclusions to be drawn therefrom, in determining the ultimate question of the granting or refusal of the authority sought by the applicant, Schaffer.

We have carefully reviewed the evidence in this case, and without detailing it, we are unable to say that the Commission's conclusions and orders are not supported by substantial evidence, or that it acted illegally, arbitrarily or capriciously.

While we wish to note that had we been acting in place of the Commission in this case, we may have reached different conclusions, this fact will not justify our setting aside the report and orders of the Commission. I.C.C. v. Union Pacific R.R. Co., supra; Miss. Valley Barge Line Co. v. U.S., 292 U.S. 282, 287; Rochester Tele. Corp. v U. S., supra; Universal Camera Corp. v Labor Board, 340 U.S. 474, 497.

Plaintiff, American Trucking Association, particularly argues that the Commission in this case has acted contrary to and has not carried out the National Transportation Policy, (49 USC. preceding Sec. 1). And, further, that the Commission in recent years has changed its policy in determining public convenience and necessity. We cannot agree with either of these contentions as a matter of law. The burden of proof showing a need for the proposed service under the provisions of Sec. 207(a) of the Interstate Commerce Act was upon the plaintiff. The Commission did not deny the application on the ground that rail service in and of itself was adequate. It purported to weigh all of the salient factors constituting proof of need for the service and in the light of the entire record found that there wasn't any need for the service which could not be handled adequately by existing carriers, both motor and rail.

The Commission is not required to set forth its findings in the terms of the provisions of the National Transportation Policy. In Luckenbach S.S. Co. v U.S., 122 Fed. Supp. 824, affirmed per curiam, 347 U.S. 984, Judge Hand, pp 827-8, said:

> "It is clear that the expressed policy must serve as a guide to the Commission in all its decisions. United States v. Great Northern R. Co., 343 U.S. 562, 576, 72 S. Ct. 985, 96 L. Ed. 1142; McLean Trucking Co. v. United States, 321 U.S. 67, 82-84, 64 S. Ct. 370, 88 L. Ed. 544. However it seems equally clear that the Commission can not and should not be required to dis- [fol. 739] cuss each consideration expressed in the National Transportation Policy in every decision it renders. 'The basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented.'

Alabama Great Southern R. Co. v. United States, 340 U.S. 216, 288; 71 S. Ct. 264, 95 L. Ed. 225. It is only necessary that the essential basis of the Commission's order appear in the report so that a court can satisfy itself that the Commission has performed its function. See Newtex S.S. Corp. v United States, D.C., S.D.N.Y., 107 Fed. Supp. 388, affirmed 344, U.S. 901, 73 S. Ct. 285, 97 L. Ed. 696; Capital Transit Co. v. United States, D.C., D.C., 97 Fed. Supp. 614, 621."

While the Commission in its final report changed its mind, this does not constitute reversible error subject to review by this court. In Beard-Laney v. U.S., 83 Fed. Supp. 27, 33, affirmed 338 U.S. 803, Judge Parker said:

"The rules to be applied in reviewing the order of the Commission are not different because that order resulted from a reversal of the prior decision of the hearing division upon a petition for rehearing. The fact that a rehearing was granted shows that the questions involved were carefully considered and the ultimate decision of the division, which received the approval of the Commission, was the final and definitive action of the Commission, which is what we are authorized to review; and it is to be reviewed in the same way and under the same limitations as other reviewable orders. We may not substitute our judgment for that of the Commission because upon a rehearing and fuller consideration of the fact it has arrived at a different conclusion from that which its hearing division had first expressed. Lang Transp. Co. v. United States, D.C., 75 F. Supp. 915, 925."

While, as above indicated, this Court may have reached a different conclusion if it had been weighing the evidence in this case, we must and do find that the Commission acted within the scope of its authority, that it acted without abuse of its discretion, that its action was not arbitrary or capricious, and that there were adequate facts to support its findings and that its conclusions are not contrary to law.

For the reasons hereinbefore stated plaintiff's complaint will be dismissed.

March 13, 1956.

[fol. 740]

By The Court: Charles J. Vogel, United States Circuit Judge.
George T. Mickelson, United States District Judge.
Edward J. Devitt, United States District Judge.

[fol. 742] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

Civil Action

File No. 624 N. D.

A. W. SCHAFFER, d/b/a SCHAFFER TRANSPORTATION COMPANY, and AMERICAN TRUCKING ASSOCIATIONS, INC., Plaintiffs

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants.

JUDGMENT—May 17, 1956

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on January 24, 1956, before a duly constituted three-judge District Court, convened pursuant to Sections 2284 and 2321-2325, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on March 13, 1956, filed herein its opinion, holding that the order of the Commission denying a certificate of public convenience and necessity to engage in interstate or foreign operations by motor vehicle on public highways is legal and valid, it is hereby

[fol. 743] ORDERED, ADJUDGED, AND DECREED that the relief prayed for by plaintiff, be, and the same hereby is denied, and the complaint be, and the same hereby is dismissed.

This the 17th day of May, 1956.

Charles J. Vogel, United States Circuit Judge,
George T. Mickelson, United States District Judge,
Edward J. Devitt, United States District Judge.

Attest: Roy B. Marker, Clerk.

(SEAL OF COURT)

[fol. 745] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, NORTHERN DIVISION

Civil Action No. 624 N. D.

A. W. SCHAFFER, d/b/a SCHAFFER TRANSPORTATION COMPANY, and AMERICAN TRUCKING ASSOCIATIONS, INC., Plaintiffs

v.

INTERSTATE COMMERCE COMMISSION, and UNITED STATES OF AMERICA, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 19, 1956

I

Notice is hereby given that A. W. Schaffer, d/b/a Schaffer Transportation Company, and American Trucking Associations, Inc., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final judgment dismissing the complaint entered in this action on May 25, 1956.

This appeal is taken pursuant to 28 U.S.C.A. §1253.

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Complaint, dated August 8, 1955, including Appendix A, the report and order of the Commission, Division 5, dated May 24, 1954, Appendix B, the report and order of the [fol. 746] entire Commission, dated February 7, 1955, and Appendix C, the order of the Commission, dated May 16, 1955, denying reconsideration.

(b) Answer of Interstate Commerce Commission, dated September 27, 1955.

(c) Answer of United States, dated September 28, 1955.

(d) Motion and Notice of Motion of Intervening Railroads for Leave to Intervene, Order Permitting Intervention, Stipulation and Answer of Intervening Railroads, all dated December 27, 1955.

(e) Opinion, dated March 13, 1956.

(f) Judgment, dated May 25, 1956.

(g) Transcript of testimony, and exhibits, before the Interstate Commerce Commission.

(h) This notice of appeal.

III

The question presented for the Court's consideration in this proceeding may be simply stated. It is:

> Is a motor carrier, in applying for operating authority pursuant to the provisions of Section 207 of the Interstate Commerce Act (49 U.S.C.A. §307) required to prove that existing *rail* service is inadequate?

Stated another way, the question may be put thusly:

> Under the scheme of regulation adopted by Congress and embodied in the Interstate Commerce Act and the National Transportation Policy, are the shippers of the country entitled to service by all available forms of [fol. 747] transport, or may the Interstate Commerce Commission determine that only the services of rail transport shall be utilized?

Respectfully submitted,

R. G. May, Donald A. Morken, Attorneys for A. W. Schaffer d/b/a Schaffer Transportation Company

Peter T. Beardsley, Fritz R. Kahn, R. G. May, Harry E. Boot, Attorneys for American Trucking Associations, Inc.

1424 Sixteenth Street, N. W., Washington, D. C.

Due: July 25, 1956.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 754] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 755] SUPREME COURT OF THE UNITED STATES

No. 419, October Term, 1956

SCHAFFER TRANSPORTATION COMPANY and AMERICAN TRUCKING ASSOCIATIONS, INC., Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al.

ORDER NOTING PROBABLE JURISDICTION—December 3, 1956

APPEAL from the United States District Court for the Northern District of South Dakota.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. Oral argument will be limited to 45 minutes a side.

December 3, 1956